

or leased line.¹⁸³ Assessments would not distinguish between residential and business connections, but rather would be based purely on capacity. As a result, assessments on a typical residential connection would be higher than under the first proposal discussed above. Under this proposal, there would be different capacity tiers for different types of connections, as with the connection-based approach described above.¹⁸⁴ One-way pagers would be treated as one-half of an access connection, and two-way pagers would be deemed to be one access connection. Centrex lines would be assessed at the rate of one-ninth that of PBX lines, consistent with treatment of Centrex and PBX under our current rules.¹⁸⁵ Intrastate-only and international-only connections would be excluded from the contribution base. Self-providers would be exempt from contribution, and there would be a *de minimis* exemption similar to that described above, such that a provider would be *de minimis* if it received less than \$100,000 in annual interstate telecommunications revenues.

88. We seek comment on the overall feasibility of this approach. We specifically seek comment on claims by interexchange carriers that they do not have access to information needed to determine their switched transport-related contribution obligation under such a system.¹⁸⁶ Several commenters argue that this information sharing has the potential to create the sort of inefficiencies and increased transaction costs that were associated with implementing the Presubscribed Interexchange Carrier Charge (PICC), which the Commission ultimately found problematic.¹⁸⁷ We seek comment on whether such a proposal could be structured in a manner that creates incentives for the local exchange carrier to share connection information with the transport provider in a timely fashion. We also seek comment on whether such information sharing could lead to inequities among providers, in that LECs that also provide long-distance service would not have to incur the administrative costs of sharing information that a traditional stand-alone IXC would incur. We seek comment on the treatment of Lifeline connections under

¹⁸³ This definition could be modified depending on which version of this proposal is adopted

¹⁸⁴ We note that SBC and BellSouth recently have proposed using up to 14 capacity tiers. *See SBC Oct. 10 Ex Parte*.

¹⁸⁵ *See* 47 C.F.R. §§ 69.158, 69.153(e); NRTA and OPASTCO Comments at 19-20; Verizon Comments at 12; Texas Comments at 5.

¹⁸⁶ According to CoSUS, interexchange carriers “do not, as a routine part of their commercial operations, have the information about their customers’ end user access connections necessary to report and pay [universal service fund] contributions under SBC-BellSouth, but would have to obtain that information from the [local exchange carrier].” *See* Letter from John T. Nakahata, Counsel to the Coalition for Sustainable Universal Service, to Marlene Dortch, Federal Communications Commission, filed Sep. 9, 2002 (*CoSUS Sep. 9 Ex Parte*).

¹⁸⁷ *See, e.g.*, CoSUS Reply Comments at 30-33; Sprint Reply Comments at 18. The *CALLS Order* eliminated residential and single-line business PICCs. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long Distance Users*, CC Docket No. 99-249, Report and Order, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Eleventh Report and Order, 15 FCC Rcd 12962, 12991, para. 76 (*CALLS Order*) (subsequent history omitted). In that Order, the Commission acknowledged the inefficiencies and increased transactional costs associated with assessing interexchange carriers based on presubscribed lines. *Id.* at 12991-94, paras. 76-81.

such a proposal, in light of commenters' statements that IXC's do not know which of their customers are Lifeline customers.¹⁸⁸ We invite commenters to provide detailed information on the costs associated with such data-sharing, and to address whether systems could be devised, and under what time frame, to facilitate necessary information sharing. Furthermore, we seek comment on the treatment under this approach of customers that make no long-distance calls in a given month, because many IXC's do not currently bill such customers on a monthly basis.¹⁸⁹

89. As originally proposed by SBC/BellSouth, a revenue-based assessment would be applied only to IXC's that do not provide the transport portion of a switched connection on a presubscribed basis (*e.g.*, dial-around providers).¹⁹⁰ We specifically seek comment on whether this approach would create disincentives for certain categories of customers, such as high volume users, to use such non-presubscribed services. We seek comment on whether this approach would be competitively neutral. We also seek comment on the frequency of such revenue-based reporting, and how to calculate such revenue-based assessments.

90. We seek comment on the impact of this proposal on different categories of customers. Would residential households, as a whole, pay more, less, or about the same as they would under the revenue-based system? What percentage of residential households would pay more under this approach compared to the revenue-based methodology?

91. We recognize that this proposal would require new regulatory reporting requirements. We urge commenters to quantify the costs of charges to carrier billing systems and other costs associated with implementation of a new reporting requirement.

92. We also seek comment on two alternatives to this proposal that would assess wireline switched access and transport providers partly on a connection basis, and partly on a revenue basis.¹⁹¹ Under the first of these alternatives, wireline switched access providers would be assessed on the basis of the number and capacity of connections, and wireline switched transport providers (including both presubscribed and non-presubscribed long-distance providers) would be assessed on the basis of interstate end-user revenues. The second alternative, however, would only split assessments between switched access and transport providers when the access and transport elements are not provided by the same wireline carrier.¹⁹² Under this second alternative, the presubscribed transport provider that does not also provide the access element of a connection would be assessed on a revenue basis, as would the non-presubscribed transport provider. The switched access provider would be assessed the full connection-based charge (for both access and transport) when it provides both the interstate access and transport elements.

¹⁸⁸ See, *e.g.*, Sprint Reply Comments at 18-19.

¹⁸⁹ See CoSUS Reply Comments at 31.

¹⁹⁰ See SBC Comments at 11.

¹⁹¹ Under these alternatives, CMRS providers would be assessed purely on a connection basis.

¹⁹² See SBC/BellSouth Nov. 5 *Ex Parte*.

Thus, under either of these alternatives, only the access provider would be assessed for non-switched connections, and providers of non-presubscribed services would be assessed on a revenue basis.

93. Under the first of these alternatives, a capacity-based assessment would be assigned to each end-user connection. In order to calculate assessments under this system, the capacity-based assessment assigned to each wireline switched end-user connection would be divided equally between the access provider and the transport provider.¹⁹³ The transport portion of the capacity-based assessment would be the basis for determining the total amount that would be recovered from all switched long-distance providers on a revenue basis. For example, in order to determine revenue-based assessments for switched long-distance providers on an annual basis, the Commission would divide the projected revenue requirement for the universal service mechanisms in the upcoming calendar year by the total projected number of capacity units (including non-switched capacity units) for the upcoming calendar year in order to determine a monthly assessment per capacity unit. That rate would then be multiplied by the total number of switched capacity units, resulting in the monthly total switched connection assessment. The total switched long-distance revenues as reported on the FCC Form 499-A, divided into an amount equal to half the total switched connection assessment,¹⁹⁴ would result in a revenue-based contribution factor for **all** switched transport providers, and those providers would be assessed monthly on that factor, multiplied by one twelfth of their annual interstate end-user telecommunications revenues.

94. We also seek comment on the second alternative, which would only split connection-based assessments between interstate switched access and transport providers when the access and transport elements are not provided by the same carrier.¹⁹⁵ Under this second proposal, the switched access provider would be assessed the full connection-based charge when it provides both the interstate access and transport elements.¹⁹⁶

95. We seek comment on how such approaches might work, and the benefits and drawbacks of each. In particular, we seek comment on whether these alternative approaches would avoid some of the difficulties commenters have cited regarding the sharing of information between LECs and IXC. We also seek comment on whether this proposal potentially would place traditional long distance providers at a competitive disadvantage when competing against integrated providers of local and long distance. We seek comment on whether continuing to assess a major segment of the industry on the basis of revenues would adequately address our concerns about the difficulties associated with distinguishing interstate from non-interstate

¹⁹³ For switched connections, the number of access and transport connections would be the same

¹⁹⁴ Half the switched connection assessment would equal 12 times the projected switched capacity units times the assessment rate, divided by 2.

¹⁹⁵ See *id.*

¹⁹⁶ *Id.*

revenues, and other potential long-term problems associated with a revenue-based methodology.¹⁹⁷ We invite comment on whether high-volume users would have incentives to purchase bundled local and long-distance service in order to avoid revenue-based assessments. We seek comment on how frequently the Commission should determine revenue-based assessment rates for switched transport providers and what reporting obligations would be necessary to calculate such assessments. We also seek comment on whether such a proposal would increase the administrative costs associated with complying with universal service contribution obligations. In addition, we seek comment on the likely impact of these two alternatives on residential customers.

C. Telephone Number-Based Assessments

96. Third, we seek comment on the benefits and drawbacks of proposals to assess connections on the basis of telephone numbers. AT&T and Ad Hoc recently proposed a methodology that would assess providers on the basis of telephone numbers assigned to end users (assigned numbers), while assessing special access and private lines that do not have assigned numbers on the basis of the capacity of those end-user connections.¹⁹⁸ We seek comment on whether such a system would provide a sufficient and sustainable basis for funding universal service. We also ask whether the plan might encourage public policy goals such as the conservation and optimization of existing telephone number resources.¹⁹⁹ We seek comment on whether a telephone number-based methodology would address some of the concerns expressed by commenters regarding a connection-based approach. For instance, some commenters argue that a flat-fee connection-based approach would be an illegal assessment on intrastate revenues under section 2(b), because connections provide, in part, intrastate access.²⁰⁰ We seek comment on whether the Commission's exclusive jurisdiction over numbering resources addresses section 2(b) concerns raised by some commenters.²⁰¹ We also seek comment on whether, in conjunction with this telephone number-based approach, we should impose a minimum contribution obligation on all providers.²⁰²

97. We seek comment on how to implement a telephone number-based methodology.

¹⁹⁷ See *supra* paras. 3-4.

¹⁹⁸ See *AT&T Oct. 22 Ex Parte; Ad Hoc Oct. 3 Ex Parte*. "Assigned numbers" are defined as "numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use" See 47 C.F.R. § 52.15(f)(1)(iii).

¹⁹⁹ See *AT&T Oct. 22 Ex Parte; Ad Hoc Oct. 3 Ex Parte*.

²⁰⁰ See, e.g., Verizon Wireless Comments at 7-9; 47 U.S.C. § 2(b)(1) ("Nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . .").

²⁰¹ See 47 U.S.C. § 251(e)(1) ("The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.") See also *AT&T Oct. 22 Ex Parte*.

²⁰² See *supra* at paras. 78, 80

We also invite commenters to estimate assessment rates under this proposal. We seek comment on how multi-line switched business services such as Centrex and PBX, as well as 500,900, and distinctive ring numbers, should be treated under a telephone number-based approach.²⁰³ We also seek comment on whether to assess telephone numbers associated with pagers at a lower level. If certain telephone numbers associated with specific types of services, such as electronic fax services, should be treated differently, we ask commenters to address how we would identify such telephone numbers. We seek comment on how a telephone number-based methodology would assess ported telephone numbers. In addition, we seek comment on whether it would be appropriate to assign lower telephone number-based assessment rates to local exchange carriers that do not participate in 1,000 block number pooling. We ask commenters to discuss whether seasonal-use telephone numbers and telephone numbers assigned for a customer's intermittent or cyclical use should be assessed and, if so, at what charge. We seek comment on whether working, rather than assigned, toll free numbers should be assessed.²⁰⁴ We ask commenters to discuss whether the Responsible Organizations should be assessed for toll free numbers and whether we could assess such entities if they are neither telecommunications carriers nor providers of telecommunications.²⁰⁵

98. We seek comment on the relative impact of a telephone number-based methodology on carriers that provide connections with smaller amounts of capacity, such as those provided to residential and single-line business users, compared to providers of higher-capacity connections to large multi-line businesses or providers of smaller-capacity connections to large businesses with heavily used toll free numbers (e.g., a national retail catalog company). We also seek comment on whether there are any numbers associated with special access and private lines that could be assessed. If not, we ask commenters to discuss whether special access and private lines should be assessed based on the capacity of the connection, and whether doing so would sufficiently offset possible inequities related to differences of capacity. We particularly seek comment on that aspect of the Ad Hoc and AT&T proposal that would assess non-switched multi-line business connections based on three tiers of capacity with the same multipliers proposed by CoSUS.²⁰⁶ We seek comment on whether these multipliers would unfairly advantage contributors that provide high-capacity connections, and whether an increased number of tiers or different tier levels may reduce such an advantage. Alternatively, we seek comment on whether to categorize connections into the same four tiers described above, based on

²⁰³ See *AT&T Oct. 22 Ex Parte*

²⁰⁴ A toll-free number has working status if it is "loaded in the Service Control Points and is being utilized to complete toll free service calls." See 47 C.F.R. § 52.105(a)(9). A toll-free number is assigned when it has "specific subscriber routing information entered by the Responsible Organization in the Service Management System database and is pending activation in the Service Control Points." See 47 C.F.R. § 52.103(a)(1).

²⁰⁵ A Responsible Organization is the "entity chosen by a toll-free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber." See 47 C.F.R. § 52.101(b).

²⁰⁶ See *Ad Hoc Oct. 3 Ex Parte* at 3 n.7.

capacity.²⁰⁷ We invite commenters to address in detail how such a plan might work, and note potential advantages and disadvantages.

99. Further, we seek comment on whether a methodology basing assessments on telephone numbers would be easier for the Administrator to implement and audit than other connection-based proposals in the record. We also seek comment regarding the process for contributors to report telephone numbers under a telephone number-based methodology. Section 52.15(f)(6) of our current rules requires telecommunications carriers that receive numbering resources to file forecast and utilization reports twice per year.²⁰⁸ These reports include the number of assigned telephone numbers.²⁰⁹ This proposal therefore could rely upon existing reporting requirements. We seek comment on whether this semi-annual reporting requirement would be sufficient for universal service purposes. For example, would these reports adequately identify a telecommunications carrier that receives a telephone number from a noli-carrier? We **seek** comment on whether contributors should be required to submit additional documentation, such as the nature of the service provided via the telephone number, or report more frequently, perhaps on a monthly basis. We seek comment on other mechanisms that could be used to identify the number of telephone numbers that have been assigned to particular carriers. We ask that commenters quantify the costs of changes to any carrier billing systems and other costs associated with implementing this proposal.

100. As with the other proposals, we also **seek** comment on the impact of this proposal on different categories of customers. Would residential households, as a whole, pay more, less, or about the same as they would under a revenue-based system? What percentage of residential households would pay more under this approach, compared to the revenue-based methodology?

V. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

101. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),²¹⁰ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Further Notice*.²¹¹ The Commission sought written public comment on the proposals in the *First Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.²¹² To the extent that any statement in this FRFA is perceived as creating

²⁰⁷ See *supra* para. 38.

²⁰⁸ See 47 C.F.R. § 52.15(f)(6).

²⁰⁹ *Id.*

²¹⁰ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

²¹¹ See *First Further Notice*, 17 FCC Rcd at 3808-18, paras. 131-161.

²¹² See 5 U.S.C. § 604.

ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

1. Need for, and Objectives of, the Report and Order

102. In this Order, we take interim measures to maintain the viability of universal service in the near term -- a fundamental goal of this Commission -- while we consider further long-term reforms. First, we increase to 28.5 percent the current interim safe harbor that allows cellular, broadband PCS, and certain specialized SMRS providers to assume that 15 percent of their telecommunications revenues are interstate.²¹³ We also will require wireless telecommunications providers to make a single election whether to report actual revenues or to use the revised safe harbor for all affiliated entities within the same safe harbor category.²¹⁴ In addition, we seek to improve competitive neutrality among contributors by modifying the existing revenue-based methodology to require universal service contributions based on contributor provided projections of collected end-user interstate telecommunications revenues, instead of historical gross-billed revenues.²¹⁵ We conclude that our actions to modify the current revenue-based contribution methodology will sustain the universal service fund and increase the predictability of support in the near term, while we continue to examine more fundamental reforms.

103. We also take steps to protect consumers from unjust and unreasonable universal service contribution recovery practices.²¹⁶ Specifically, we conclude that telecommunications carriers may not recover their federal universal service contribution costs through a separate line item that includes a mark up above the relevant contribution factor. Limiting the federal universal service line-item charge to an amount that does not exceed the contribution factor, set quarterly by the Commission, will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers. Carriers will continue to have the flexibility to recover legitimate administrative costs from consumers through other means. We find that our modified contribution methodology will simplify the assessment and recovery of universal service contributions for all carriers and consumers, including small entities.

2. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

104. The Commission received no comments specifically addressing the IRFA. We did receive, however, some general small entity-related comments. Some commenters, for

²¹³ See *supra* paras. 21-24.

²¹⁴ *Id.* at paras. 25-21.

²¹⁵ *Id.* at paras. 29-32.

²¹⁶ See generally discussion *supra* at Part III.B.

example, asserted that a connection-based methodology would be inequitable and burdensome for small businesses, particularly with respect to assessment of multi-line business connections based on the proposed tiers of capacity outlined in the *First Further Notice*.²¹⁷ Commenters also expressed general concerns about carrier recovery practices.²¹⁸ Other commenters maintained that a *de minimis* exemption was essential to any contribution system adopted by the Commission.²¹⁹ In this Order, we modify the existing methodology; therefore, issues raised with respect to the impact of a connection-based assessment on small entity concerns are not directly implicated by our actions taken today. We do note, however, that the Commission, concurrent with the issuance of the Order adopted a *Second Further Notice* that seeks comment on specific aspects of three connection-based proposals in the record. To the extent that commenters continue to have small entity-related concerns, they may submit comments in response to the *Second Further Notice*, as discussed in detail below.²²⁰

105. In the Order, we adopt certain modifications to the existing methodology.²²¹ As noted in the Order, we, among other things, have adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for all consumers, including small entities, about the amount of universal service contributions that are passed through by carriers, while maximizing fairness and flexibility for carriers.²²² By allowing carriers to contribute based on projections of their collected end-user revenues, we eliminate one of the major reasons for carriers to recover amounts in excess of the relevant assessment rate.²²³ We prohibit carriers from marking up federal universal service line items above the contribution factor. These actions address small entity concerns regarding recovery practices. We have also retained the *de minimis* exemption to ensure that compliance costs associated with contributing to universal service do not exceed actual contribution amounts.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

106. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²²⁴ The

²¹⁷ See, e.g., Allied Comments at 2-4; ASCENT Reply Comments at 2-4; Beacon Comments at 5; ITA Reply Comments at 4.

²¹⁸ See, e.g., CPUC Comments at 14; CU et al. Comments at 20-21; NASUCA Comments at 17; Texas Reply Comments at 2.

²¹⁹ See, e.g., AAPC Comments at 10; Allied Comments at 9; ITA Reply Comments at 6-7; NECA Comments at 7-8; Teletouch Comments at 10.

²²⁰ See *infra* paras. 137-140

²²¹ See generally discussion *supra* Part III.A

²²² Id. at Part III.B

²²³ Id. at Part III.A

²²⁴ 5 U.S.C. § 604(a)(3).

RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²²⁵ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."²²⁶ Nationwide, as of 1992, there were approximately 275,801 small organizations.²²⁷ "Small governmental jurisdiction"²²⁸ generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²²⁹ As of 1992, there were approximately 85,006 governmental entities, total, in the United States.²³⁰ This number includes 38,978 cities, counties, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.²³¹ The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or *more* definitions that are appropriate to its activities.²³² Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).²³³

107. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the W A is one that, *inferalia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."²³⁴ The SBA's Office of Advocacy contends that, for W A purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.²³⁵

²²⁵ 5 U.S.C. § 601(6).

²²⁶ 5 U.S.C. § 601(4).

²²⁷ U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration),

²²⁸ 47 C.F.R. § 1.1162.

²²⁹ 5 U.S.C. § 601(5)

²³⁰ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Governments.

²³¹ *Id.*

²³² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

²³³ 15 U.S.C. § 632.

²³⁴ *Id.*

²³⁵ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, Federal Communications Commission (May 27, 1999). The Small Business Act contains a definition of "small business (continued....)

We have therefore included small incumbent local exchange carriers in this FRFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

108. *Wireline Carriers and Service Providers (Wired Telecommunications Carriers).*²³⁶ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees.²³⁷ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.²³⁸ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more.²³⁹ Thus, under this size standard, the great majority of firms can be considered small.

109. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers.²⁴⁰ Under that SBA definition, such a business is small if it has 1,500 or fewer employees.²⁴¹ According to our most recent data, there are 1,329 incumbent LECs, 532 CAPs, 229 IXCs, 22 OSPs, 936 payphone providers and 710 resellers.²⁴² Of these, an estimated 1,024 incumbent LECs, 411 CAPs, 181 IXCs, 20 OSPs, 933 payphone providers, and 669 resellers reported that they have 1,500 or fewer employees; 305 incumbent LECs, 121 CAPs, 48 IXCs, 2 OSPs, 3 payphone providers, and 41 resellers reported that, alone or in combination with affiliates, they have more than 1,500 employees.²⁴³

(...continued from previous page)

concern.” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

²³⁶ For the limited purposes of this FRFA, we will use the term “Wired Telecommunications Carriers” to connote wireline carriers and service providers.

²³⁷ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310.

²³⁸ U.S. Census Bureau. 1997 Economic Census, Subject Series: Information, “Employment Size of Firms Subject to Federal Income Tax: 1997,” Table 5, NAICS code 513310 (issued Oct. 2000).

²³⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

²⁴⁰ NAICS code 513310

²⁴¹ 13 C.F.R. § 121.201, NAICS codes 513310 and 513330

²⁴² FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service (May 2002), (*Trends in Telephone Report*) at Table 16.3. The total for resellers includes both toll resellers and local resellers. The category for CAPs also includes competitive local exchange carriers (CLECs).

²⁴³ See *Trends in Telephone Report* at Table 5.3

We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXC, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this Order.

110. **Wireless Service Providers.** The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees.²⁴⁴ According to the most recent *Trends in Telephone Report* data, 1,761 companies reported that they were engaged in the provision of wireless service.²⁴⁵ Of these 1,761 companies, an estimated 1,175 reported that they have 1,500 or fewer employees and 586 reported that, alone or in combination with affiliates, they have more than 1,500 employees.²⁴⁶ Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

111. **Broadband Personal Communications Service (PCS).** The broadband PCS spectrum is divided into six frequency designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.²⁴⁷ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²⁴⁸ These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.²⁴⁹ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.²⁵⁰ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses;

²⁴⁴ 13C.F.R. § 121.201, NAICS codes 517211 and 517212.

²⁴⁵ *Trends in Telephone Report* at Table 5.3.

²⁴⁶ *Id.*

²⁴⁷ See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, WT Docket No. 96-59, Report and Order, 11 FCC Rcd 7824, paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

²⁴⁸ See Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, WT Docket No. 96-59, 11 FCC Rcd 7824, paras. 57-60 (1996), 61 Fed. Reg. 33859 (July 1, 1996).

²⁴⁹ See, e.g., Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84, paras. 115-17 (1994).

²⁵⁰ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (rel. Jan. 14, 1997); see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications (continued....)

there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small businesses." Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

112. **Narrowband PCS.** To date, two auctions of narrowband PCS licenses have been conducted. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. For purposes of the two auctions that have already been held, small businesses were defined as entities with average gross revenues for the prior three calendar years of \$40 million or less. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.²⁵¹ A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. These definitions have been approved by the SBA. In the future, the Commission will auction 459 licenses to serve MTAs and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this FRFA, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

113. **Specialized Mobile Radio (SMR).** The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3

(...continued from previous page)

Services (PCS) Licensees, WT Docket No. 97-82, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 16436 (1997), 62 Fed. Reg. 55348 (Oct. 24, 1997).

²⁵¹ *Amendment of the Commission's Rules to Establish New Personal Communications Services, narrowband PCS*, Docket No. ET 92-100, Docket No. PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000)

million in each of the three previous calendar years, respectively.²⁵² In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

114. **Rural Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.²⁵³ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).²⁵⁴ For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra* -- an entity employing no more than 1,500 persons.²⁵⁵ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

115. **Air-Ground Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.²⁵⁶ For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra* -- an entity employing no more than 1,500 persons.²⁵⁷ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

4. Description of Projected Reporting, Recordkeeping, and Other

²⁵² 47 C.F.R. § 90.814.

²⁵³ The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

²⁵⁴ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules. 47 C.F.R. §§ 22.757, 22.759.

²⁵⁵ 13 C.F.R. § 121.201, NAICS codes 513321, 513322.

²⁵⁶ The service is defined in section 22.99 of the Commission's Rules. 47 C.F.R. § 22.99.

²⁵⁷ 13 C.F.R. § 121.201, NAICS codes 513321, 513322.

Compliance Requirements

116. Pursuant to the Order, contributions to the Commission's universal service will be based on projections provided by contributors of their collected end-user interstate and international telecommunications revenues (*i.e.*, end-user telecommunications revenues less estimated uncollectibles).²⁵⁸ As noted in the Order, the modified methodology will result in minimal changes to current reporting requirements.²⁵⁹ Because the projected collection approach we adopt is similar to the existing contribution methodology, it will be relatively easy for both USAC and contributors to administer and implement this modification to our current methodology while we consider other reforms to the current system. Consistent with our existing policy, contributors will continue to file a Form 499-Q on a quarterly basis and the Form 499-A on an annual basis. The Commission and USAC will also continue to set contribution factors on a quarterly basis using the same timeframes as the current methodology. Under the revised methodology, however, in addition to filing the Form 499-Q to report historical gross-billed revenues from the prior quarter, contributors also will project their gross-billed and collected end-user interstate and international telecommunications revenues for the upcoming quarter. We believe that this will not be burdensome for contributors, as they need to develop such projections for their own internal business purposes. Consistent with current procedures, contributors will have the option of certifying as to the confidential nature of such projections on the FCC Form 499-Q.

117. As noted in the Order, we retain the requirement for an officer to certify to the truthfulness and accuracy of the FCC Form 499-A submitted to the Administrator.²⁶⁰ We also will require an officer to certify that the projections of revenue and uncollectibles included in the FCC Form 499-Q represent a good-faith estimate based on company policies and procedures. To ensure the contributors report correct information on the FCC Form 499-A, we require all contributors to maintain records and documentation to justify the information reported in the Form 499-A for three years. We also will require filers to maintain records detailing the methodology used to determine projections in the Form 499-Q for three years. Filers will be required to provide such records and documentation to the Commission and USAC upon request.²⁶¹

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

118. The RFA requires an agency to describe any significant alternatives that it has

²⁵⁸ See *supra* paras. 29-32

²⁵⁹ *Id.* at paras. 33-37.

²⁶⁰ *Id.* at para. 34.

²⁶¹ We also note that persons willfully making false statements in the Worksheets **can** be punished by fine or imprisonment under title 18 of the United States Code. See 18 U.S.C. § 1001.

considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."²⁶²

119. The Commission has taken numerous steps to minimize significant economic impact on small entities in adopting modifications to the revenue-based methodology for assessing and recovering contributions to the federal universal service mechanisms. In modifying the existing contribution system, we have adopted rules related to contribution recovery that will increase billing transparency and decrease confusion for consumers about the amount of universal service contributions that are passed through by carriers, while ensuring that carriers continue to have the flexibility to recover legitimate administrative costs from consumers through other means.²⁶³ By allowing carriers to contribute based on projected collected end-user revenues, we eliminate one of the major reasons for carriers to recover amounts in excess of the relevant assessment rate. In light of these changes, we prohibit carriers from marking up federal universal service line items above the contribution factor. These actions address small entity concerns regarding recovery practices. We have also retained the *de minimis* exemption to ensure that compliance costs associated with contributing to universal service do not exceed actual contribution amounts. Consistent with the views expressed by many commenters, including small entity commenters, we find that the alternatives to revise or eliminate the *de minimis exemption* are not supported by the record developed at this time.''

120. As discussed in the Order, we have also considered various alternative proposals on how to reform the universal service contribution system.²⁶⁵ We conclude that the modifications to the current revenue-based contribution methodology, as adopted in the Order will maintain the viability of universal service in the near term, while we continue to examine reforms that are more fundamental based on proposals submitted in the record in this proceeding.

6. Report to Congress

121. The Commission will send a copy of the Order, including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²⁶⁶ In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also

²⁶² 5 U.S.C. § 603(c)(1)-(4).

²⁶³ See *supra* para. 2; see generally discussion *supra* at Part III.B.

²⁶⁴ See, e.g., Allied Comments at 9; CPC Comments at 14-15; ITA Reply Comments at 6-7; NECA Comments 7-8.

²⁶⁵ See generally discussion *supra* at Part III.

' '' See 5 U.S.C. § 801(a)(1)(A).

be published in the Federal Register.²⁶⁷

B. Paperwork Reduction Act Analysis

122. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reported and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

C. Initial Regulatory Flexibility Act Analysis

123. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) on the possible significant economic impact on small entities of policies and rules proposed in this Second Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided below in section V.E.

1. Need for and Objectives of the Proposed Rules

124. The assessment and recovery of universal service contributions are governed by the statutory framework established by Congress in the Act.²⁶⁸ Section 254(b) instructs the Commission to establish universal service support mechanisms with the goal of ensuring the delivery of affordable telecommunications services to all Americans, including consumers in high-cost areas, low-income consumers, eligible schools and libraries, and rural health care providers.²⁶⁹ Section 254(d) of the Act states that “[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”²⁷⁰

125. Consistent with section 254 of the Act and as noted in the Order, today we take interim measures to maintain the viability of universal service in the near term -- a fundamental

²⁶⁷ See 5 U.S.C. § 604(b).

²⁶⁸ See 47 U.S.C. §§ 201, 202, 254.

²⁶⁹ 47 U.S.C. § 254(b)

²⁷⁰ 47 U.S.C. § 254(d). See *also* 47 U.S.C. § 254(b)(4), (5) (providing that Commission policy on universal service shall be based, in part, on the principles that contributions should be equitable and nondiscriminatory, and support mechanisms should be specific, predictable, and sufficient). The Commission adopted the additional principle that federal support mechanisms should be competitively neutral, neither unfairly advantaging nor disadvantaging particular service providers or technologies. See *Universal Service Order*, 12 FCC Rcd at 8801-03, paras. 46-51.

goal of this Commission -- while we consider further long-term reforms.''' As discussed in further detail in the Order, although the interim measures we adopt today will improve the current contribution methodology, they do not address our concerns regarding the long-term viability of any revenue-based system.²⁷² We therefore conclude that it is appropriate to further study long-term reforms of the contribution methodology.

126. Therefore, in this *Second Further Notice*, we seek comment on specific aspects of three connection-based proposals in the record.²⁷³ First, we ask for comment on a proposed contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers and flat charge for each end-user connection depending on the nature or capacity of the connection. Next, we seek comment on a proposal to assess all connections based purely on capacity. Under this proposal, contribution obligations for each switched end-user connection would be shared between access and transport providers. Finally, we seek comment on a proposal to assess providers of switched connections based on their working telephone numbers.

2. Legal Basis

127. The legal basis as proposed for this *Second Further Notice* is contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 4(i), 4(j), 201-205, 254, 403.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

128. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²⁷⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁷⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.²⁷⁶ Under the Small Business Act, a "small business concern" is one that: (1) is

²⁷¹ See generally discussion *supra* at Parts I & III.

²⁷² See *supra* paras. 3-4.

²⁷³ See *supra* at Part IV.

²⁷⁴ 5 U.S.C. § 604(a)(3).

²⁷⁵ 5 U.S.C. § 601(6).

²⁷⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the Federal Register."

independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).²⁷⁷

129. We have described in detail, *supra*, in the Final Regulatory Flexibility Analysis, the categories of entities that may be directly affected by any rules or proposals adopted in our efforts to reform the universal service contribution system.²⁷⁸ For this Initial Regulatory Flexibility Analysis, we hereby incorporate those entity descriptions by reference.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

130. Should the Commission decide that fundamental reform of the existing contribution methodology is needed, the associated rule changes potentially could modify the reporting and recordkeeping requirements of telecommunications service providers regulated under the Communications Act. Under a connection-based mechanism, we potentially could require telecommunications service providers to file additional and/or different monthly or quarterly reports.²⁷⁹ Any such reporting requirements potentially could require the use of professional skills, including legal and accounting expertise. Without more data, we cannot accurately estimate the cost of compliance by small telecommunications service providers. In this IFRA, we therefore seek comment on the frequency with which carriers should submit reports to USAC, the types of burdens carriers will face in periodically submitting reports to USAC, and whether the costs of such reporting are outweighed by the potential benefits of the possible reforms.²⁸⁰ Entities, especially small businesses and small entities, more generally, are encouraged to quantify the costs and benefits of the reporting requirement proposals.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

131. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.²⁸¹

²⁷⁷ 15 U.S.C. § 632.

²⁷⁸ See *supra* paras. 108-115.

²⁷⁹ See *supra* at paras. 77-78.

²⁸⁰ *Id.*

²⁸¹ 5 U.S.C. § 603(c).

132. The *Second Further Notice* seeks comment on a number of connection-based alternatives to modify the existing contribution methodology system. Although the proponents of specific connection-based proposals argue that they would be consistent with the requirements of section 254(d) of the Act that every telecommunications carrier that provides interstate telecommunications services contribute to the Commission's universal service mechanisms on an equitable and nondiscriminatory basis, several other parties have expressed concerns that the connection-based proposals in the record would be inconsistent with the statutory mandate.²⁸² We specifically take note of those commenters that **argue** that the connection-based proposals in the record would result in inequitable contributions.²⁸³

133. We therefore believe it is appropriate to further develop the record on aspects of certain proposals to assess universal service contributions at least in part on the number and capacity of connections. We also believe it is appropriate to continue refining our analysis of the potential impacts on consumers and contributors, including small entities, of adopting such a methodology. In this *Second Further Notice*, we **seek** comment on specific measures the Commission could take to ensure that a connection-based contribution methodology would be consistent with these statutory mandates. The Commission will also consider additional significant alternatives developed in the record.

134. Wherever possible, the *Second Further Notice* seeks comment on how to reduce the administrative burden and cost of compliance for small telecommunications service providers. For example, we seek comment on the operation of a *de minimis* exemption under the various connections-based proposals. We also seek comment on the appropriate frequency and content of reporting under a connection-based methodology. We specifically seek comment from contributors that are small entities under the Small Business Act.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

135. None.

D. Initial Paperwork Reduction Act of 1995 Analysis

136. The *Second Further Notice* contains either a proposed or modified information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the same time as other comments on the *Second Further Notice*; OMB comments are due **60** days from the date of publication of the *Second Further Notice* in the Federal Register. Comments should

²⁸² See generally discussion *supra* at Part I.

²⁸³ See generally discussion *supra* at Part IV.

address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

E. Comment Filing Procedures

137. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments 30 days or fewer from publication in the Federal Register, and reply comments 60 days or fewer from publication in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁸⁴

138. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

139. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. **All** hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All** filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

²⁸⁴ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

140. Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street S.W., Room 5-B540, Washington, D.C. 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals 11, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20054.

F. Ex Parte Presentations

141. This is a permit but disclose rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules.²⁸⁵

VI. ORDERING CLAUSES

142. Accordingly, IT IS ORDERED THAT, pursuant to the authority contained in sections 1-4, 201-205, 214, 218-220, 254, 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 214, 218-220, 254, 403, and 405, this REPORT AND ORDER IS ADOPTED.

143. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, IS AMENDED as set forth in Appendix A hereto, effective 30 days after their publication in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

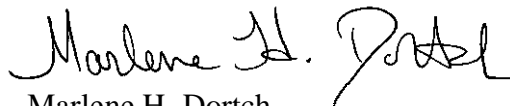
144. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this REPORT AND ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

145. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403, this Second Further Notice of Proposed Rulemaking IS ADOPTED.

²⁸⁵ See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1203, and 1.1206.

146. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a **copy** of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch". The signature is fluid and cursive, with the first name "Marlene" being the most prominent part.

Marlene H. Dortch
Secretary

APPENDIX A – FINAL RULES

Part **54** of the Code of Federal Regulations is amended as follows:

PART 54–UNIVERSAL SERVICE**Subpart H— Administration**

1. Amend section 54.706 to revise paragraphs (b) and (c) as follows:

§ 54.706 Contributions

(a) * * *

(b) Prior to April 1, 2003, except as provided in paragraph (c) of this section, every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and every payphone provider that is an aggregator shall contribute to the federal universal service support mechanisms on the basis of its interstate and international end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, except as provided in paragraph (c), every such provider shall contribute on the basis of its projected collected interstate and international end-user telecommunications revenues, net *of* projected contributions.

(c) Prior to April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose interstate end-user telecommunications revenues comprise less than

12 percent of its combined interstate and international end-user telecommunications revenues shall contribute to the federal universal service support mechanisms for high cost areas, low-income consumers, schools and libraries, and rural health care providers based only on such entity's interstate end-user telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on such entity's projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an "entity" shall refer to the entity that is subject to the universal service reporting requirements in 47 CFR 54.711 and shall include all of that entity's affiliated providers of telecommunications services.

* * * * *

2. Amend section 54.709 to revise paragraphs (a), (a)(1), and the first sentence of paragraph (a)(2) as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Prior to April 1, 2003, contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and on a contribution factor

determined quarterly by the Commission. Contributions to the mechanisms beginning April 1, 2003 shall be based on contributors' projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.

(1) For funding the federal universal service support mechanisms prior to April 1, 2003, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions. Beginning April 1, 2003, the subject revenues will be contributors' projected collected interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of projected contributions.

(2) Prior to April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of projected contributions. * * *

3. Amend section 54.711 to revise paragraph (a) as follows:

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the Federal Register. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis. The Commission shall announce by Public Notice published in the Federal Register and on its website the manner of payment and dates by which payments must be made. An executive officer of the contributor must certify to the truth and accuracy of historical data included in the Telecommunications Reporting Worksheet, and that any projections in the Telecommunications Reporting Worksheet represent a good-faith estimate based on the contributor's policies and procedures. The Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet. Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

* * * * *

4. Add section 54.712 to subpart H as follows:

§ 54.712 Carrier recovery of universal service costs from end-users.

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a telecommunications carrier chooses to recover its federal universal service contribution costs through a line item on a customer's bill, as of April 1, 2003, the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

(b) Eligible telecommunications carriers may not recover federal universal service contribution costs from Lifeline customers.

APPENDIX B

**PARTIES FILING COMMENTS AND REPLY COMMENTS
IN CC DOCKET NOS. 96-45, 98-171, 90-571, 92-237, 99-200-95-116, 98-170**

Comments:**Commenters****Abbreviation**

| | |
|---|-----------|
| Ad Hoc Telecommunications Users Committee | Ad Hoc |
| Alaska Telephone Association | ATA |
| Allied Personal Communications Industry Association of California | Allied |
| AOL Time Warner Inc. | AOL |
| American Association of Paging Carriers | AAPC |
| American Mobile Telecommunications Assoc. Inc. | AMTA |
| American Public Communications Council | APCC |
| Arch Wireless, Inc. | Arch |
| Association of Communications Enterprises | ASCENT |
| AT&T Corp. | AT&T |
| AT&T Wireless Services, Inc. | AWS |
| BBG Communications, Inc. | BBG |
| Beacon Telecommunications Advisors, LLC | Beacon |
| BellSouth Corporation | BellSouth |
| BT North America Inc. | BTNA |
| California Public Utilities Commission and The People of the State of California | CPUC |
| Coalition for Sustainable Universal Service | CoSUS |
| Competitive Telecommunications Association | CompTel |
| Concerned Paging Carriers | CPC |
| Consumer's Union, Texas Office of Public Utility Counsel, Consumer Federation of America Appalachian People's Action Coalition, Center for Digital Democracy, Edgemont Neighborhood Coalition, and Migrant Legal Action Program | CU et al. |
| ePHONE Telecom, Inc. | ePHONE |
| Fred Williamson and Associates, Inc. | FW&A |
| General Services Administration | GSA |
| Home Telephone Company, Inc., Bluffton Telephone Co., Inc., | |

| | |
|--|--------------------|
| Hargray Telephone Co., Inc., | |
| Chesnee Telephone Co., | |
| Chester Telephone Co., | |
| Lockhart Telephone Co., Inc. | |
| Ridgeway Telephone Co., Inc. | |
| Farmers Telephone Co., Inc. | |
| Palmetto Rural Telephone Cooperative, Inc. | |
| PBT Telecom, Inc. | |
| Piedmont Rural Telephone Cooperative, Inc. | |
| Sandhill Telephone Cooperative, Inc. | |
| Sandwich Isles Communications, Inc. | |
| Yukon Telephone Co., Inc. | Home et al. |
| Information Technology Association of America | ITAA |
| National Association of State Utility Consumer Advocates | NASUCA |
| National Exchange Carrier Association, Inc. | NECA |
| National Rural Telecom Association and the Organization for Promotion and Advancement of Small Telecom Companies | NRTA and OPASTCO |
| National Telecommunications Cooperative Association | NTCA |
| Nebraska Independent Companies | Nebraska |
| Nextel Communications, Inc. | Nextel |
| OnStar Corporation | OnStar |
| PaeTec Communications, Inc. | PaeTec |
| Rural Cellular Association, The | RCA |
| Rural Independent Competitive Alliance, The | RICA |
| SBC Communications Inc. | SBC |
| Sprint Corporation | Sprint |
| Texas, State of | Texas |
| Teletouch Communications, Inc. | Teletouch |
| Time Warner Telecom, XO Communications, and Allegiance Telecom | Time Warner et al. |
| TracFone Wireless, Inc. | TracFone |
| United States Cellular Corporation | USCC |
| United States Telecom Association | USTA |
| Verizon telephone companies | Verizon |
| Verizon Wireless | Verizon Wireless |
| Vincent J. Stoneking | V. Stoneking |
| Virgin Mobile USA, LLC | Virgin Mobile |
| Voicestream Wireless Corporation | Voicestream |
| Western Wireless Corporation | Western |
| Working Assets Funding Service, Inc. | Working Assets |
| WorldCom, Inc. | WorldCom |

Reply Comments:**Reply Commenters****Abbreviation**

| | |
|--|-----------|
| Alaska Communications Systems | ACS |
| AOL Time Warner Inc. | AOL |
| American Library Associations | ALA |
| American Public Communications Council | APCC |
| Arch Wireless | Arch |
| Association of Communications Enterprises | ASCENT |
| Association for Local Telecommunications Services | ALTS |
| BellSouth Corporation | BellSouth |
| BT North America | BTNA |
| Cable & Wireless USA, Inc. | C&W |
| Coalition for Sustainable Universal Service | COSUS |
| Concerned Paging Carriers | |
| AirCall, Inc | |
| The Beeper People, Inc. | |
| Business Service Center, Inc. | |
| Com-Nav Inc., d/b/a Radio Telephone of Maine | |
| Cook telecom, Inc., Lubbock Radio Paging Service, Inc. | |
| Mobile Phone of Texas, Inc. | |
| Mobilpage, Inc. | |
| Omnicom Paging Plus, LLC | |
| Page-All, LLC | |
| Professional Answering Service, Inc. | |
| RCC Inc., d/b/a/ Radio Comm. Co. | |
| RediCall Communications Co. | |
| Robert F. Ryder d/b/a Radio Paging Service | |
| Salisbury Mobile Telephone, Inc. | |
| SEMA-PHOON, Inc. d/b/a/ R.A. Communications | |
| Starpag, Inc. | CPC |
| Consumers Union | |
| Texas Office of Public Utility Counsel | |
| Consumer Federal of America | |
| Appalachian People's Action Coalition | |
| Center for Digital Democracy | |
| Edgemont Neighborhood Coalition | |
| Migrant Legal Action Program | CU |
| Earthlink, Inc. | Earthlink |
| Industrial Telecommunications Association, Inc. | ITA |
| Information Technology Association of America | ITAA |
| National ALEC Association/Prepaid Communications | |

| | |
|---|------------------|
| Association | NALA |
| National Rural Telecom Association | |
| Organization for the Promotion and Advancement Of Small Telecommunications Companies | NRTA and OPASTCO |
| National Telecommunications Cooperative Association | NTCA |
| Nextel Communications, Inc. | Nextel |
| Public Utilities Commission of Ohio | Ohio PUC |
| OnStar Corporation | OnStar |
| Qwest Communications International Inc. | Qwest |
| SBC Communications Inc. | SBC |
| Sprint Corporation | Sprint |
| Southern Communications Services, Inc. d/b/a Southern LINC | Southern |
| Texas, State of | Texas |
| TracFone Wireless, Inc. | TracFone |
| United States Cellular Corporation | USCC |
| Verizon | Verizon |
| Verizon Wireless | Verizon Wireless |
| Voice on the Net Coalition | VON |
| Voicestream Wireless Corporation | Voicestream |
| Warriner, Gesinger & Associations, LLC | Warriner et al. |
| WebLink Wireless, Inc. | WebLink |
| Western Alliance | Western Alliance |
| Worldcom. Inc. | Worldcom |

APPENDIX C
REVISED FORM 499-Q AND INSTRUCTIONS

The form and attached instructions that follow have not yet been approved by OMB and have been attached for informational purposes.

| | |
|---|-------|
| 108 Person who completed this worksheet | |
| 109 Telephone number of this person | () - |
| 110 Fax number of this person | () - |
| 111 E-mail of this person | |
| 112 Billing address and billing contact person: [Bills for Universal Service contributions will be sent to this address.] | |

Block 3: Contributor Historical and Projected Revenue Information

| | | | |
|--|------|--------------------------|---|
| 113 Year of historical revenue information | 2002 | 114 Filing Due | February 1, 2003 |
| Fourth Quarter 2002 (October 1 through December 31) historical billed revenues with no allowance or deductions for uncollectibles. See instructions. | | Total Revenues (a) | Interstate Revenues (b) International Revenues (c) |
| 115 Telecommunications provided to other universal service contributors for resale | | | |
| 116 End-user telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues | | | |
| 117 All other goods and services | | | Column (b) and (c) not requested for Lines 117 and 118 |
| 118 Gross-billed revenues from all sources [sum of above] | | | |
| 119 interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues | | | |
| 120 First Quarter 2003 (January 1 through March 31) projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues | | | |
| 121 Second Quarter 2003 (April 1 through June 30) projected gross-billed end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues | | | |
| 122 Second Quarter 2003 (April 1 through June 30) projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues | | | |

based on company procedures and policies.

| | |
|------------------------------------|---|
| 124 Signature | |
| 125 Printed name of officer | |
| 126 Position with reporting entity | |
| 127 Date | |
| 128 This filing is: | <input type="checkbox"/> Original filing <input type="checkbox"/> Revised filing [revisions due within 45 days of original filing deadline] |

Do not mail checks with this form. Send this form to: Form 499 c/o NECA, 80 South Jefferson Road, Whippany, N.J. 07981

For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet info: (973) 560-4460 or via e-mail: Form499@neca.org

PERSONS WILLFULLY MAKING FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

FCC Form 499-Q, February 2003

Pending Approval by OMB

Estimated Average Burden Hours Per Response: 10 Hours

Telecommunications Reporting Worksheet, FCC Form 499-Q

Instructions for Completing the Quarterly
Worksheet for Filing Contributions
to Universal Service Support Mechanisms

* * * * *

NOTICE TO INDIVIDUALS: Sections 54.706, 54.711, and 54.713 of the Federal Communications Commission's rules require all telecommunications carriers providing interstate telecommunications services, providers of interstate telecommunications that offer interstate telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators to contribute to universal service and file this Telecommunications Reporting Worksheet (FCC Form 499-Q) on February 1, May 1, August 1, and November 1, each year. 47 C.F.R. §§ 54.706, 54.711, 54.713. This collection of information stems from the Commission's authority under Section 254 of the Communications Act of 1934, **as** amended, 47 U.S.C. § 254. The data in the Worksheet will be used to calculate contributions to the universal service support mechanisms. Selected information provided in the Worksheet will be made available to the public in a manner consistent with the Commission's rules.

We have estimated that each response to this collection of information will take, on average, 10.0 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain the required data, project growth or decline in revenues, and actually complete and review the form or response. If you have any comments on this estimate, or how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD-PERM, Washington, D.C. 20554, Paperwork Reduction Project (3060-0855). We also will accept your comments via the Internet if you send them to jjboley@fcc.gov. Please **DO NOT SEND COMPLETED WORKSHEETS TO THIS ADDRESS**.

Remember -- You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid Office of Management and Budget (OMB) control number. This collection **has** been assigned an OMB control number of 3060-0855.

The Commission is authorized under the Communications Act of 1934, as amended, to collect the information we request in this form. We will use the information that you provide to determine contribution amounts. If we believe there may be a violation or potential violation of a statute or a Commission regulation, rule, or order, **your** Worksheet may be referred to the Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing the statute, rule, regulation, or order. In certain cases, the information in your Worksheet may be disclosed to the Department **of** Justice, court, or other adjudicative body when (a) the Commission; or (b) any employee of the Commission; or (c) the United States government, is a party to a proceeding before the body or has an interest in the proceeding.

With the exception of your employer identification number, if you do not provide the information we request on the Worksheet, the Commission may consider you in violation of sections 1.47, 52.17, 52.32, 54.713, and 64.604 of the Commission's rules. 47 C.F.R. §§ 1.47, 52.17, 52.32, 54.713, and 64.604.

The foregoing Notice is required by the Privacy Act of 1974, P.L. 93-579, December 31, 1974, 5 U.S.C. § 552(a)(e)(3), and the Paperwork Reduction Act of 1995, P.L. No. 104-13, 44 U.S.C. § 3501, *et seq.*

* * * * *

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I. Introduction

As required under the Communications Act of 1934, as amended,¹ the Commission has established procedures to finance universal service support mechanisms. To accomplish this Congressionally-directed objective, contributions are collected from telecommunications carriers providing interstate telecommunications and certain other providers of interstate telecommunications. This Worksheet sets forth information that the contributor must submit, so that the administrator of the universal service support mechanisms may calculate and assess contributions.²

11. Filing Requirements and General Instructions

A. Who Must File

All providers of interstate telecommunications within the United States: with very limited exceptions, must file an FCC Form 499-Q Telecommunications Reporting Worksheet.³

For purposes of determining whether an entity provides telecommunications, please note that the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of filing, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony, including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; and resale services. Note, for example, that all incumbent and competitive local exchange carriers provide access to an interstate public network and, therefore, provide interstate telecommunications.

Note also that entities must file this Worksheet, and are subject to universal service contribution requirements, if they offer interstate telecommunications for a fee to the public even if only a narrow or limited class of users could utilize the services. Included are entities that provide interstate

¹ 47 U.S.C. §§ 151 *et seq.*

² On March 9, 2001, the Commission modified its rules to base universal service contributions on information reported on quarterly Telecommunications Reporting Worksheet **filings**, with an annual true-up based on information reported on annual Telecommunications Reporting Worksheets. *Federal-State Joint Board on Universal Service; Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, FCC 01-85 (rel. Mar. 14, 2001). See also *1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, FCC 99-175, CC Docket No. 98-171 (rel. Jul. 14, 1999) (*Contributor Reporting Requirements Order*).

³ For this purpose, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island.

⁴ Section 254(d) applies not only to "every telecommunications carrier that provides interstate telecommunications services" but also to certain "other provider[s] of interstate telecommunications." 47 U.S.C. § 254(d) (emphasis added). Solely for the purposes of these Instructions, we use the terms "telecommunications services" and "telecommunications" interchangeably, unless otherwise specified. For more information on these terms, see 47 U.S.C. §§ 3(43), (46); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (Universal Service Order).

telecommunications to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," must file this Worksheet if they do not qualify for the *de minimis* exemption under the Commission's universal service rules.'

The following three sections list types of telecommunications providers that are not required to file the Form 499-Q. Note that such entities are treated as end users by their underlying carriers and therefore may be subject to pass-through charges.

1. Universal service exemption for *de minimis* telecommunications providers

Section 54.708 of the Commission's rules states that telecommunications carriers and telecommunications providers are not required to contribute directly to the universal service support mechanisms for a given year if their contribution for that year is less than \$10,000.⁶ Thus, potential contributors whose contribution to the universal service support mechanisms would be *de minimis* under the universal service rules are not required to file the Worksheet (FCC Form 499-Q) or contribute directly to universal service. Telecommunications carriers and other telecommunications providers should complete the table contained in Figure 1 to determine whether they meet the *de minimis* standard. To complete Figure 1, potential filers and all affiliates must first complete block 3 of the Worksheet and enter the amounts from Line 122(b) and 122(c) in Figure 1.

Telecommunications providers that do not file this Worksheet because their contributions would be *de minimis* should retain Figure 1 and documentation of their contribution base revenues for three years and may be required to provide it to the administrator or FCC upon request.

⁵ 47 C.F.R. § 54.708. *See also* Figure 1.

⁶ 47 C.F.R. § 54.708.

Figure I : Table to determine if a contributor meets the *de minimis* standard for purposes of universal service contribution

| | | |
|----|--|--------|
| 1 | Interstate contribution base for the quarter for filer (amount reportable on filer's Form 499-Q; Line 122(b)) | \$ |
| 2 | International contribution base for the quarter for filer (amount reportable on filer's Form 499-Q; Line 122(c)) | \$ |
| 3 | Interstate contribution base for the quarter for all affiliates* (total of amounts reportable on Form 499-Q; Line 122(b) for all affiliates of the filer) | \$ |
| 4 | International contribution base for the quarter for all affiliates (total of amounts reportable on Form 499-Q; Line 122(e) for all affiliates of the filer) | \$ |
| 5 | Consolidated interstate contribution base: Line (1) + Line (3) | \$ |
| 6 | Consolidated international contribution base: Line (2) + Line (4) | \$ |
| 7 | Total potential contribution base for filer and its affiliates: Line (5) + Line (6) | \$ |
| 8 | Combined interstate contribution base as a percentage of total potential contribution base: Line (5) / Line (7) | % |
| 9 | Interstate contribution base for filer from Line (1) | \$ |
| 10 | If the amount in Line (8) is equal to or greater than 12%, enter into Line (10) the international contribution base for the filer from Line (2). If the amount on Line (8) is less than 12%, enter \$0 | \$ |
| 11 | Revenue base for the filer for the quarter for determining contributions to universal service support mechanisms: Line (9) + Line (10) | \$ |
| 12 | Actual contributions to federal universal service support mechanisms made in the calendar quarter for which revenues are being reported. | \$ |
| 13 | Contribution base: Line (11) – Line (12) | \$ |
| 14 | | 4 |
| 15 | Annualized contribution base; Line (13) multiplied by Line (14) | |
| 16 | Estimation factor for determining whether to file a 499-Q | 0.095* |
| 17 | Estimated annual contribution: amount in Line (15) multiplied by Line (16) | \$ |

* An affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." *See* 47 U.S.C. § 153(1).

** The estimation factor is higher than the contribution factor announced for the first quarter of 2003. *See Public Notice*, DA 02-3387. Actual contribution factors for 2003 may increase or decrease depending on quarterly changes in program costs and the contribution base. Filers whose actual contribution requirements total less than \$10,000 for the calendar year will be treated as *de minimis* and will receive refunds, if necessary. Filers whose actual contribution requirements total \$10,000 or more are required to contribute to the universal service support mechanisms and must file this Worksheet.

2. Exception for government, broadcasters, schools, and libraries

Certain entities are explicitly exempted from contributing directly to the universal service support mechanisms and need not file this Worksheet. Government entities that purchase telecommunications services in bulk on behalf of themselves, e.g., state networks for schools and libraries, are not required to file or contribute directly to universal service. Public safety and local governmental entities licensed under Subpart B of Part 90 of the Commission's rules are not required to file or contribute directly to universal service. Similarly, if an entity provides interstate telecommunications exclusively to public safety or government entities and does not offer services to others, that entity is not required to file or contribute directly to universal service. In addition, broadcasters, non-profit schools, non-profit libraries, non-profit colleges, non-profit universities, and non-profit health care providers are not required to file the Worksheet or contribute directly to universal service.

3. Exception for systems integrators and self providers

Systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications are not required to file or contribute directly to universal service. Systems integrators are providers of integrated packages of services and products that may include the provision of computer capabilities, interstate telecommunications services, remote data processing services, back-office data processing, management of customer relationships with underlying carriers and vendors, provision of telecommunications and computer equipment, equipment maintenance, help desk functions, and other services and products). Legal entities that provide services only to themselves or to commonly owned affiliates need not file.

B. Filing by Legal Entity

Each legal entity that provides interstate telecommunications service for a fee, including each affiliate or subsidiary of an entity, must complete separately and file a copy of the attached Telecommunications Reporting Worksheet, except as provided for below. Entities that have distinct articles of incorporation are separate legal entities. Each affiliate or subsidiary should identify their ultimate controlling parent or entity on Block 1 Line (105) -- Holding Company.

Consolidated filing will be permitted only if the filing entity certifies that all of the following conditions are met:⁷

- (1) A single entity oversees the management of the affiliated systems;
- (2) A single entity sends bills to customers and these bills identify a single entity (or trade name) as the service provider, rather than identifying the individual legal entities;
- (3) All revenues are posted to a single general ledger;

⁷ *Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans With Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-231, 99-200, 95-116, 98-170, Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43 (rel. Feb. 26, 2002).

- (4) To the extent that separate revenue and expense accounts exist, they are derived from one consolidated set of books and the consolidated filing must cover all revenues contained in the consolidated books;
- (5) Customers have a single point of contact;
- (6) The consolidated filer acknowledges that process served on the consolidated filer would represent process served on any or all of the affiliated legal entities;
- (7) The consolidated filer agrees to document and resolve all slamming complaints that might be served on either the filing entity or any of the affiliated legal entities;⁸
- (8) The consolidated filer obtains a separate FCC Registration Number (FRN) from those assigned to its affiliated legal entities;
- (9) The consolidated filer acknowledges that its obligations with regard to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees will be based on the data provided in consolidated Worksheet filings, that it bears the responsibility to satisfy those obligations, and that all legal entities covered by the filing are jointly and severally liable for such obligations; and
- (10) The consolidated filer acknowledges that it: **(A)** was not insolvent on the date it undertook to make payments on a consolidated basis or on the date of actual payments to universal service, Telecommunications Relay Services, Local Number Portability, the North American Numbering Plan, and regulatory fees, and did not become insolvent **as** a result of such undertaking or payments; **(B)** was not left with unreasonably small capital as a result of such undertaking or payments; and **(C)** was not left unable to pay debts as they matured as a result of such undertaking or payments.'

Each year, entities choosing to file on a consolidated basis must file a statement certifying that they meet all of the above conditions. Such certification also must include: (1) a list of the legal names of all legal entities that are covered by the filing; (2) the Form 499 identification numbers of all legal entities that are covered by the filing; (3) the consolidated filer's FRN; and (4) for wireless carriers, a list of all radio licenses (call signs) issued to each legal entity covered by the filing. Consolidated filers should file this certification with the Commission's Data Collection Agent. Furthermore, a contributor choosing to file on a consolidated basis should recognize that any penalties associated with failure to pay or with underpayment of any of its obligations will be assessed on the total revenue reported on the consolidated basis, rather than on a separate legal entity basis.

⁸ A CMRS carrier that is not subject to certain slamming regulations is not required to certify that it will document and resolve all slamming complaints that might be served on either the filing entity or any of its affiliated legal entities that also are not subject to the slamming regulations.

⁹ For purposes of this certification, the term "insolvent" means either unable to pay debts when due or having liabilities greater than assets. *See* 11 U.S.C. § 101(32).

C. When and Where to File

Figure 2 provides the filing schedule and relevant filing addresses. If a filing date is a holiday (as defined in Section 1.4(e)(1) of the Commission's rules), Worksheets are due the next business day.

Figure 2: Filing schedule

| When to file | What to file | Where to file * |
|---|--|---|
| February 1 of each year | Completed Form 499-Q containing revenue information for October 1 through December 31 of the prior calendar year and projections for April 1 through June 30** | Form 499 Data Collection Agent Attn: Cristy Dolechal 80 South Jefferson Rd. Whippany, NJ 07981 |
| April 1 of each year | Completed Form 499-A containing revenue information for January 1 through December 31 of the prior calendar year | Form 499 Data Collection Agent (address above) |
| May 1 of each year | Completed Form 499-Q containing revenue information for January 1 through March 31 and projections for July 1 through September 30 | Form 499 Data Collection Agent (address above) |
| August 1 of each year | Completed Form 499-Q containing revenue information for April 1 through June 30 and projections for October 1 through December 31 | Form 499 Data Collection Agent (address above) |
| November 1 of each year | Completed Form 499-Q containing revenue information for July 1 through September 30 and projections for January 1 through March 31 of the coming year | Form 499 Data Collection Agent (address above) |
| <p>* Do not send universal service contributions with this Worksheet or to the above address. The universal service administrator will calculate the amount of contribution due and send a bill to the billing contact person and billing address identified in Line (112) of the Form 499-Q.</p> <p>** The February 1, 2003 filing also includes projections for the first calendar quarter of 2003.</p> | | |

D. Rounding of Numbers and Negative Numbers

All information provided in the Worksheet should be neatly printed in ink or typed. Please provide an original officer signature in ink in Line (124).

Dollar Amounts. Reported revenues in Block 3 that are greater than a thousand dollars may be rounded to the nearest thousand dollars. Regardless of rounding, all dollar amounts must be reported in whole dollars. For example, \$2,271,881.93 could be reported as \$2,271,882 or as \$2,272,000, but could not be reported as \$2272 thousand, \$2,270,000.00 or \$2.272 million. Please enter \$0 in any line for which the contributor had no revenues for the year.

Negative Numbers. Contributors are directed to provide billed revenues on Lines (115) through (119) and (121) without subtracting any expenses, allowances for uncollectibles or settlement payments and without making out-of-period adjustments. The amount of projected uncollectibles (the difference between Line (119) and Line (120) and the difference between Line (121) and Line (122)) cannot exceed projected billings. Therefore, do not enter negative numbers on the form.

E. Obligation to File Revisions

Line (128) provides check boxes to show whether the Worksheet is the original filing or a revised filing for the quarter. A contributor must file a revised 499-Q Worksheet if it discovers an error in the data that it reports' *i.e.*, if the filer discovers that it omitted or misclassified a major category of revenue. However, revised filings must be made within 45 calendar days of the original filing date. In general, the historical revenues contained in the quarterly filings will be based on unaudited books from a point in time and the projections will represent the filer's expectations as of a point in time. Contributors need not file revisions to the Form 499-Q as a result of ordinary accounting adjustments such as out-of-period adjustments. Revenue information from the Form 499-A will be used to ensure that contributions for the whole year are based on all subject revenues for the year.

Contributors should not file a revised Form 499-Q Telecommunications Reporting Worksheet to reflect mergers, acquisitions, or sales of operating units. In the event that a contributor that filed a Form 499-Q no longer exists, the successor company to the contributor's assets or operations is responsible for continuing to make payments, if any, for the funding period and must notify the Commission's Data Collection Agent.

F. Compliance

Failure to file the Telecommunications Reporting Worksheet or to pay contributions in a timely fashion may subject entities to the enforcement provisions of the Communications Act and any other applicable law. In addition, telecommunications providers may be billed by the administrators for reasonable costs, including interest and administrative costs that are caused by late, inaccurate, or untruthful filing of the Worksheet or overdue contributions."

¹⁰ See 47 C.F.R. § 54.713

111. Specific Instructions

A. Block I : Contributor Identification Information

Block 1 of the Telecommunications Reporting Worksheet requires identification information

Line (101) -- enter the "Filer **499 ID**" number for the filing entity. This code is assigned by the Commission's **Data** Collection Agent after a company files its first FCC Form 499-A. Filer **499 IDs** for current filers can be found at <http://gulfoss2.fcc.gov/cib/form499/499a.clib> in the FCC report **Telecommunications Provider Locator**, which is available on the Commission's web site at www.fcc.gov/ccb/stats. This code should be entered at the top of any cover letter or supporting documentation. New filers are assigned Filer **499 ID** numbers after a completed Form 499-A Telecommunications Reporting Worksheet is received by the data collection agent.

Line (102)-- enter the legal name of the filer as it appears on articles of incorporation and other legal documents. Each legal entity must file a separate Worksheet unless affiliated entities are filing on a consolidated basis."

Line (103)-- provide the Internal Revenue Service (IRS) employer identification number (EIN) for the filer. This should be the same EIN that the company uses to file federal excise taxes or income taxes, if the filer offers services subject to those taxes. The EIN is also known as the taxpayer identification number (TIN) or for individuals as the social security number (SSN).

Line (104)-- provide the principal name under which the company conducts telecommunications activities. This would typically be the name that appears on customer bills, or the name used when service representatives answer customer inquiries.

Line (105) -- **use this block to provide a common identifier for all affiliated filers**. Typically, this would be the name of the filer's holding company or controlling entity, if any. The common name used by all affiliates need not be a common carrier. **All** reporting affiliates or commonly controlled entities should have the **identical** name appearing on line (106). An affiliate is a "person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.""

Line (106)-- provide the FCC Registration Number (FRN). The FRN is a ten digit number that includes a check-digit. The FRN is used to identify an entity within all Commission Licensing Filing systems and RAMIS (the Commission's Revenue Accounting Management Information System). This number is assigned by CORES (the Commission Registration System) and can be obtained at <https://gulfoss2.fcc.gov/core/CoreHome.html>. For assistance, contact the CORES help desk at (877)480-3201 or by e-mail at CORES@fcc.gov.

Line (107)-- enter the complete mailing address of the corporate headquarters of the reporting entity

¹¹ See Section II-B, page 6, for information on making consolidated filings.

¹² See 47 U.S.C. § 153(1).

B. Block 2: Contact Information

Lines (108-111) -- enter the name, telephone number, fax number, and e-mail address of the person who filled out the Form 499-Q. This should be a person who can provide clarifications or additional information, and, if necessary, who could serve as the first point of contact in the event that either the Commission or an administrator should choose to verify *or* audit information provided in the Telecommunications Reporting Worksheet.

Line (112) -- provide a billing contact person name and address for administrators to send billing information for contributions to the universal service fund. Information on establishing electronic fund transfer and bills for universal service will be sent to this address unless other arrangements are made via written request.

C. Block 3: Contributor Revenue Information

Line (113) -- enter the year for which revenue information is being filed.

Line (114) -- check the appropriate box to indicate the calendar quarters for which historical and projected revenue information are being reported.

Lines (115-120) contain detailed revenue data.

1. Separating Revenue from Service Provided to Other Universal Service Contributors for Resale [Line (115)] from End-User Telecommunications Revenues [Line (116)] (carrier's carrier vs. end user)

In the Telecommunications Reporting Worksheet, filers must report revenues using two broad categories: (1) Revenues from other contributors to the federal universal service support mechanisms; and, (2) Revenues from all other sources. Taken together, these revenues should include all revenues billed to customers and should include all revenues on the reporting entities' books of account.

For the purposes of this Worksheet, "Revenues from services provided for resale by other contributors to federal universal service support mechanisms" are revenues from services provided by underlying carriers to other entities that currently are contributors to federal universal service support mechanisms and that are resold in the form of telecommunications. Such revenues are referred to herein as "carrier's carrier revenues" or "revenues from resellers." Revenues from all other sources consist primarily of revenues from services provided to end users, referred to here as "end-user revenues." This latter category includes non-telecommunications revenues

For the purpose of completing Line (115), a "reseller" is a telecommunications carrier or telecommunications provider that: 1) incorporates purchased telecommunications services into its own telecommunications offerings; and 2) can reasonably be expected to contribute to federal universal service support mechanisms based on revenues from such offerings when provided to end users.

Each filer should have documented procedures to ensure that it reports as "revenues from resellers" only revenues from entities that reasonably would be expected to contribute to support universal service. The procedures should include but not be limited to maintaining the following information on resellers: Filer 499 ID; legal name; address; name of a contact person; and phone number of the contact person. The filer should verify that each reseller will: 1) resell the filer's services in the form of telecommunications; and

2) contribute directly to the federal universal service support mechanisms. If the filer does not have independent reason to know that the reseller satisfies these criteria, it should obtain a signed statement certifying that these criteria are met. Current contributors to universal service are identified at <http://gulfoss2.fcc.gov/cib/form499/499a.cfm>.

Note: For the purposes of filling out this Worksheet -- and for calculating contributions to the universal service support mechanisms -- certain telecommunications carriers and service providers may be exempt from contribution to the universal service support mechanisms. These exempt entities, including "international only" and "intrastate only" carriers and carriers that meet the *de minimis* universal service threshold, should not be treated as resellers for the purpose of reporting revenues on Line (1 15). That is, filers that are underlying carriers should report revenues derived from the provision of telecommunications to exempt carriers and providers (including services provided to entities that are *de minimis* for universal service purposes) on Line (1 16). Underlying carriers must contribute to the universal service support mechanisms on the basis of such revenues.

2. Column (a) - total revenues

The reporting entity must report gross revenues from all sources, including nonregulated and non-telecommunications services on Lines (1 15) through (1 17) and these must add to total gross revenues as reported on Line (1 18). Gross revenues should include revenues derived from the activation and provision of interstate, international, and intrastate telecommunications and non-telecommunications services. Gross revenues consist of total revenues billed to customers during the filing period with no allowances for uncollectibles, settlements, or out-of-period adjustments. Gross billed revenues may be distinct from booked revenues. NECA pool companies should report the actual gross billed revenues (CABS Revenues) reported to the NECA pool and not settlement revenues received from the pool.

Where two contributors have merged prior to the filing date, the successor company should report total revenues for the reporting period for all predecessor operations. The two contributors, however, should continue to report separately if each maintains separate corporate identities and continues to operate." Where an entity obtains, through purchase or transfer, the telecommunications operations or customer base of a telecommunications provider during a quarter, it must report all telecommunications revenues associated with such operations or customer base including revenues billed in the quarter prior to the date of acquisition.

Gross revenues also should include any surcharges on telecommunications services that are billed to the customer and either retained by the contributor or remitted to a non-government third party under contract. Gross revenues should exclude taxes and any surcharges that are not recorded on the company books as revenues but which instead are remitted to government bodies. Note that any charge included on the customer bill and represented to recover or collect contributions to federal or state universal service support mechanisms must be included in Line (1 16). Other surcharges treated as revenue should be included in the revenue categories on which the surcharges were levied.

For international services, gross revenues consist of gross revenues billed by U.S. contributors with no allowances for settlement payments. International settlement receipts for foreign billed service should not be included in revenues.

¹³ See *also* Section 11-E, above.

If you have any revenue for Lines (115) and (116), you may not omit the dollar amounts from column (a) even if 100% of the revenue is for interstate or international service.

3. Column (b) and (c) - interstate & international

Columns (b) and (c) are provided to identify the part of gross revenues that arise from interstate and international service for Lines (115) and (116). Intrastate telecommunications means communications or transmission between points within the same State, Territory, or possession of the United States, or the District of Columbia. Interstate and international telecommunications means communications or transmission between a point in one State, Territory, possession of the United States or the District of Columbia and a point outside that State, Territory, possession of the United States or the District of Columbia. Revenues from services offered under interstate tariffs, such as revenues from federal subscriber line charges and from federally tariffed local number portability surcharges, should be identified as interstate revenues.

For example, if a prepaid calling card provider collects a fixed amount of revenue per minute of traffic, and 65 percent of minutes are interstate, then interstate revenues would include 65 percent of the end-user revenue. Similarly, if a LEC bills local measured service charges for calls that originate in one state and terminate in another, these billings should be classified as interstate even though the charges are covered by a state tariff and the revenues are included in a local service account. Note that under the Commission's rules, if over ten percent of the traffic carried over a private or WATS line is interstate, then the revenues and costs generated by the entire line are classified as interstate.¹⁴ In general, flat-rated unbundled network access elements should be classified according to the regulatory agency that has primary jurisdiction over the contracts. Amounts billed to customers to recover federal universal service contribution obligations should be attributed as either interstate or international revenues, as appropriate, but **no** portion of such amounts may be reported as intrastate revenues.

In many cases, interstate and international revenues cannot be determined directly from corporate books of account or subsidiary records. Filers that cannot derive interstate and international revenues or that cannot derive the line-by-line revenue breakdowns may provide on the Worksheet good faith estimates of these figures. Information supporting good faith estimates must be made available to either the FCC or to the Universal Service Administrator upon request. For convenience, calculated interstate and international revenue amounts that are greater than one thousand dollars may be rounded to the nearest thousand dollars. Please enter zero dollars in column (b) or column (c) if, and only if, there were no interstate or international revenues for the line for the reporting period.

¹⁴ See 47 C.F.R. § 36.154(a).

Pursuant to FCC orders,¹⁵ wireless telecommunications providers may utilize the following safe harbor percentages of interstate revenues associated with wireless services normally reported on Line (309) of the Form 499-A and included on Line (115) of the Form 499-Q, and on Line (409) and Line (410) of the Form 499-A and included on Line (116) of the Form 499-Q:

- 28.5% of cellular and broadband PCS telecommunications revenues
- 12% of paging revenues
- 1% of analog SMR dispatch revenues

Wireless telecommunications providers that choose to avail themselves of these safe harbor percentages for interstate revenue may assume that the FCC will not find it necessary to review or question the data underlying their reported percentages. All affiliated wireless telecommunications providers must make a single election whether to report actual revenues or to use the revised safe harbor within the same safe harbor category. So, for example, if in a given period a wireless telecommunications provider reports actual interstate revenues for its cellular and broadband PCS telecommunications services, all of its affiliated legal entities must also report actual interstate telecommunications revenues for cellular and broadband PCS offerings. The same wireless telecommunications provider and all affiliates, however, could use the safe harbor for paging services.

These safe harbor percentages may not be applied to universal service pass-through charges, fixed local service revenues, or toll service charges. All filers must report the actual amount of interstate and international revenues for these services. For example, toll charges for itemized calls appearing on mobile telephone customer bills should be reported as intrastate, interstate or international based on the origination and termination points of the calls. Thus, for example, if a filer uses the safe harbor percentage for wireless revenues and has separate charges only for international calls, it would report as interstate 28.5% of its cellular wireless revenues on Line (116) column (b) and it would report as international 100% of its revenues associated with international calls on Line (116) column (c). As a result, the total of revenues identified as interstate and international in columns (b) and (c) on FCC Form 499-Q Line (116) would exceed 28.5% of the amount reported in Line (116) column (a).

4. Explanation of historical revenue categories

Total gross revenue reported on Line (118) should equal the total of the detail amounts reported on Lines (115) through (117).

Line (115)-- Revenues from services provided to other universal service contributors for resale. This line should contain revenues from telecommunications services provided to resellers (*i.e.*, telecommunications revenue derived from other universal service contributors). This category comprises what is commonly-referred to as "carrier's carrier revenues." Filers may wish to consult the instructions for Form 499-A, Lines (303) through (314), when calculating this figure.

Line (116) -- Universal service contribution base revenues. This line should contain end-user telecommunications revenues (*i.e.*, telecommunications revenues derived from entities that do not contribute directly to universal service), except for revenue from international calls that both originate and terminate in

¹⁵ *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 13 FCC Rcd 21252, 21258-60 (1998); *Federal-State Joint Board on Universal Service 1998 Biennial Regulatory Review on Streamlined Contributor Reporting Requirements* Report and Order and Second Further Notice of Proposed Rulemaking, FCC 02-329 (rel. Dec. 13, 2002) (*Contribution Methodology Order*).

foreign points. Filers may wish to consult the instructions for Form 499-A, Line (420), when calculating this figure.

Line (117)-- Other revenue that should not be reported in the universal service contribution base. This line should contain revenue from international calls that both originate and terminate in foreign points and revenues that are reportable on Form 499-A, Line (418).

Line (117) should include all non-telecommunications service revenues on the reporting entity's books as well as some revenues that are derived from telecommunications-related functions but that should not be included in the universal service or other fund contribution bases. For example, information services offering a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications are not included in the universal service or other fund contribution bases. Information services do not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service. Information services also are called enhanced services because they are offered over common carrier transmission facilities used in interstate communications and employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. For example, call moderation and call transcription services are information services. These services are exempt from contribution requirements and should be reported on line (117). Line (117) should include revenues from published directory and carrier billing and collection services. Line (117) should include revenues from the sale, lease, installation, maintenance, or insurance of customer premises equipment (CPE), inside wiring charges, inside wiring maintenance insurance. Line (117) should include the sale or lease of transmission equipment, such as dark fiber, that is not provided as part of a telecommunications service. Line (117) should include revenues from providing open video systems (OVS), cable leased access, and direct broadcast satellite (DBS) services. Line (117) should include late payment charges and charges (penalties) imposed by the company for customer checks returned for non-payment. Line (117) should include revenues from telecommunications services provided in a foreign country where the traffic does not transit the United States or where the carrier is providing service as a foreign carrier, *i.e.*, a carrier licensed in that country.

Line (118)-- Gross billed revenues from all sources. This line should equal the sum of revenues by type of service reported on Lines (115) through (117).

As noted above, for further detail on the types of revenues that should be reported on Lines (115) through (117), filers may wish to consult the Instructions for the Form 499-A, available at the Commission's web site (www.fcc.gov/formpage.html).

5. Projected gross billed end-user interstate and international revenues

The projection quarter is the calendar quarter that starts two months after the filing date and finishes 5 months after the filing date. Line (121) should contain projected gross-billed end-user interstate and international revenues, including any pass-through charges for federal universal service contributions. These amounts should be the amounts that the filer anticipates reporting on Line (116), column (b) and column (c), in the Form 499-Q filing due six months after the present filing date. In order to estimate these amounts, the filer could review the amounts they are reporting on Line (116) in the instant filing and amounts reported in recent filings. In addition, filers could take into account general business conditions, new contracts covering the projection period, pricing trends, marketing programs, expansion plans, and other relevant information. Filers must develop good faith projections based on company procedures and

policies. If the filer anticipates that revenues are as likely to increase as decrease, then it may copy the historic values from Line (116) to use as its projections for Line (121) or it could develop projections by trending historic values from previous quarterly filings. Filers need not make projections for Line (121) column (a).

Line (119) should contain projected gross-billed end-user interstate and international revenues, including any pass-through charges for federal universal service contributions for January 1, 2003 through March 31, 2003. These projections should be made using the same procedures as are used for making the projections on Line (121).

6. Projected collected end-user interstate and international revenues

Line (122) should show the interstate and international revenues that the filer anticipates collecting from customers during the projection quarter. For this purpose "collected end-user" revenues refers to gross-billed end-user interstate and international telecommunications revenues, including any pass-through charges for federal universal service contributions, less estimated uncollectibles.¹⁶ We define uncollectibles as the percentage of interstate and international telecommunications revenues that the contributor anticipates will not be collected from end-user customers. This percentage should be calculated in accordance with Generally Accepted Accounting Principles.¹⁷ Filers that use the accrual method of accounting should use the percentage of billed revenues that they recognize currently as a reserve for uncollectibles in their books of accounts. Carriers that use the cash method of accounting should base this percentage on a comparison of actual collections and billed revenues, with the periods chosen to allow for the average delay between when services *are* billed and when payments are received. The amounts shown on Line (122) should be the amounts on Line (121) reduced by the percentage of uncollectibles.

Line (120) should show the interstate and international revenues that the filer anticipates collecting from customers during for January 1, 2003 through March 31, 2003. These projections should be made using the same procedures as are used for making the projections on Line (121).

Filers will be billed based on the amounts reported on Line (122). Any revisions to these amounts must be filed within 45 calendar days. No adjustments to billings will be made during the quarter to reflect actual levels of billed service and actual collection rates. The administrator will **use** the actual revenue data provided by Contributors on the FCC Form 499-A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year.¹⁸ As necessary, the administrator will then refund or collect from contributors any over-payments or under-payments. If the combined quarterly projected revenues reported by a contributor are greater than those reported on its annual revenue report (Form 499-A), then a refund will be provided to the contributor based on an

¹⁶ *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, 13 FCC Rcd 21252, 21258-60 (1998); *Contribution Methodology Order*, para 32.

¹⁷ General Accepted Accounting Principles (GAAP) encompasses the conventions, rules, and procedures necessary to define accepted practice in the preparation of financial statements in the United States. The Financial Accounting Standards Board (FASB) is currently the primary authority to establish GAAP for all companies. Carriers subject to the Uniform System of Accounts would derive this figure from the amount recorded in Account 5301, Uncollectible Revenue - Telecommunications.

¹⁸ See Telecommunications Reporting Worksheet, FCC Form 499-A, OMB 3060-0855 (February 2002) (FCC Form 499-A).

average of the two lowest contribution factors for the year. If the combined quarterly revenues reported by a contributor are less than those reported on its annual revenue report (Form 499-A), then administrator will collect the difference from the contributor using an average of the two highest contribution factors from that year.

Filers are required to maintain records and documentation to justify the information reported on the Telecommunications Reporting Worksheet for three years. Filers also must maintain records detailing the methodology used to determine projections reported on the Telecommunications Reporting Worksheet. Upon request, filers may be required to provide such records and documentation to the Commission or to the administrator.

D. Block 4: Certification.

Line (123) -- Filers may use the box in Line (123) to request nondisclosure of the revenue information contained on the Telecommunications Reporting Worksheet. By checking this box, the officer of the company signing the Worksheet certifies that the information contained **on** the Worksheet is privileged or confidential commercial or financial information and that disclosure of such information would likely cause substantial harm to the competitive position of the company filing the Worksheet. This box may be checked in lieu of submitting a separate request for confidentiality pursuant to section 0.459 of the Commission's rules." **All** decisions regarding disclosure of company-specific information will be made by the Commission. The Commission regularly makes publicly available the names (and Block 1 and 2 contact information) of the entities that file the Telecommunications Reporting Worksheet.

Lines (124) through (127) -- **An** officer of the reporting entity must examine the data provided in the Telecommunications Reporting Worksheet and certify that the information provided therein is accurate and that projections provided therein represent good faith estimates based on company procedures and policies. An officer is a person who occupies a position specified in the corporate by-laws (or partnership agreement), and would typically be president, vice president for operations, vice president for finance, comptroller, treasurer, or a comparable position. If the reporting entity is a sole proprietorship, the owner must sign the certification. The signature on Line (124) must be in ink.

A person who willfully makes false statements **on** the Worksheet can be punished by fine or imprisonment under title 18 of the United States Code."

Line (128) -- Indicate whether this filing is an original filing or a revised filing."

¹⁹ 41 C.F.R. § 0.459. *See also Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, FCC 98-184, GC Docket No. 96-55 (rel. Aug. 1998) (listing the showings required in a request that information be withheld and stating that the Commission may defer action on such requests until a formal request for public inspection has been made).

²⁰ *See* 18 U.S.C. § 1001

²¹ *See* Section 11-E

Reminders

- Filers are required to maintain records and documentation to justify information reported on the Telecommunications Reporting Worksheet for three years. Filers also must maintain records detailing the methodology used to determine projections reported on the Telecommunications Reporting Worksheet. Upon request, filers may be required to provide such records and documentation to the Commission or to the administrator.
- Is the filer affiliated with another telecommunications provider? Each legal entity must file separately **unless** they qualify for filing on a consolidated basis. *See* Section II-B. Each affiliate or subsidiary **must** show the same holding company name on Line (105).
- Provide data for all lines that apply. Show a zero for services for which the contributor had no revenues for the filing period.
- Contributors to universal service support mechanisms must make five FCC Form 499 filings each year. *See* Figure 2.
- Wherever possible, revenue information should be taken from the contributors' financial records. Filers also must provide projected revenue information on Line (119) through Line (122).
- The Worksheet must be signed by an officer of the reporting entity. **An** officer is a person who occupies a position specified in the corporate by laws (or partnership agreement), and would typically be president, vice president for operations, comptroller, treasurer, or a comparable position.
- Do not mail the Worksheet to the FCC. *See* Section II-C for filing instructions
- Note that *Form* 499 is one of several **forms** that telecommunications carriers and other providers of interstate telecommunications may need to file. Information concerning common filing requirements for such providers may be found on the FCC web site, at www.fcc.gov/wcb/filing.html.

If you have questions about the Worksheet or the instructions, you may contact:

| | |
|---|------------------|
| Form 499 Telecommunications Reporting | Form499@neca.org |
| Worksheet Information | (973) 560-4460 |
| Wireline Competition Bureau | |
| Industry Analysis and Technology Division | (202) 418-0940 |
| TTY | (202) 418-0484 |

If you have questions regarding contribution amounts, billing procedures or the mechanisms, you may contact:

| | |
|----------------------------------|----------------|
| Universal Service Administration | (202) 776-0200 |
|----------------------------------|----------------|

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Federal-State Board *on* Universal Service *et al.*, CC Docket Nos. **96-45** *et al.*

The Act demands that this Commission take responsible steps to ensure that our universal service contribution system remains equitable and nondiscriminatory. This item meets that test. The measures we adopt today, however, are interim. Make no mistake, during this interim period, the migration of traditional telecommunications services to digital platforms will continue to occur – and at a gathering speed. The resulting bundles of innovative telecommunications and information services will continue to stress our current revenues-based contribution system if we do not act. For this reason, among others, we must challenge ourselves to reform the Contribution system in creative ways. I believe that it remains our long-term goal and is in the best interest of American consumers that we migrate to a connection-based contribution system. I write separately today to underscore this point.

Universal service contribution policy cannot remain static. Guided – indeed commanded – by the statute, we must ensure that it evolves as telecommunications technology and markets change. The foundation the Commission has built needs to be refined to account for technological substitution and the realities of a competitive market. The actions we take today represent a timely effort to recalibrate the current revenue-based system to reflect better the growth of wireless services and improve competitive neutrality among contributors by basing contributions on projections of collected revenues. At the same time, we take action to protect consumers from unjust and unreasonable recovery practices by increasing the transparency of universal service line items on customer bills. These are prudent first steps.

We must never forget, however, that the cost of these programs ultimately is borne by American consumers. Failure to engage in reform may jeopardize the stability and sufficiency of the fund and impose unfair burdens on certain classes of carriers and their customers. By asking more questions and seeking specific comment on the assumptions that underlie each proposed contribution methodology, including connection-based systems, we will be able to refine the record in this proceeding and take further steps to ensure the long-term viability of universal service. I also recognize that some of my colleagues have suggested that the Commission address the universal service contribution requirements for broadband platforms in this proceeding. I believe, however, that such a decision must be made in the context of the Commission's pending proceeding concerning the appropriate statutory classification for broadband services. I wish to emphasize that adopting a connections-based approach to universal service contributions does not automatically mean that broadband platforms will be assessed. Rather, a connections-based approach provides a rational, simplified mechanism for addressing the disparity that currently exists between DSL and cable modem platforms. In the end, a functioning broadband market and principles of technological neutrality require that consumer choices for broadband services should not be skewed by artificial regulatory requirements.

Finally, I look forward to working with my federal and state colleagues to establish an equitable and nondiscriminatory contribution system that provides for specific, predictable, and sufficient funding to preserve and advance universal service.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

*Re: Federal-State Joint Board on Universal Service, et al., Report and Order and
Second Further Notice of Proposed Rulemaking, CC Docket Nos. 96-15 et al.*

Today's Order represents an important step in our effort to overhaul the contribution methodology for the federal universal service support mechanisms. But much work remains. While the interim measures we are adopting will help alleviate some of the inequities associated with our existing contribution rules, they do not address the fundamental shifts in the communications marketplace that call into question the long-term viability of a revenue-based contribution scheme. Most significantly, the increasing prevalence of bundling — of interstate and intrastate services, on the one hand, and of telecommunications services, information services, and customer premises equipment, on the other — tentatively persuades me that a connection-based contribution methodology would best promote the critical statutory objective of preserving and advancing universal service.

Commission staff have exhaustively combed through the existing record in an effort to develop an assessment methodology based (at least in part) on physical connections to interstate networks. I commend them for their efforts. Introducing a connections-based component to our contribution methodology will bolster the stability of universal service funding. We must also ensure that all carriers will contribute on an equitable and nondiscriminatory basis, as section 254(d) requires, and that any new regime will not impose undue administrative burdens and transaction costs. On the current record, the Commission was unable to conclude that any connection-based proposal satisfies all of these objectives. Moreover, legitimate concerns have been raised about our ability to gauge the likely consumer impact of leading proposals — which were being tweaked almost daily — without additional data and analysis. But I am optimistic that the proposals described in the Further Notice, together with the input we expect to receive from commenters, will enable the Commission to implement more comprehensive reforms in the coming year.

I understand that not all of my colleagues are persuaded at this juncture that a pure revenue-based methodology is unsustainable. Nor am I completely certain myself. But it seems increasingly clear that any methodology that assesses contributions based solely on revenues from end-user interstate telecommunications services is fundamentally incompatible with the direction of the communications industry. I have often spoken about the need for our regulations to keep up with the rapidly changing pace of technologies and markets. This is a perfect example: There is no question that the industry is moving headlong from a marketplace dominated by distinct offerings of local and long distance services to one in which bundles of any-distance telecommunications services are becoming the norm (for wireless) or at least commonplace (for wireline). And in this new environment, telecommunications services are increasingly being packaged with information services and CPE.

Some argue that instead of giving up on a revenue-based methodology, we can ensure sustainable support by assessing the telecommunications component of information services and

adopting additional revenue-allocation rules for bundled services. But that is easier said than done.' When a telecom carrier offers, for example, an integrated bundle of local and long distance voice services plus broadband Internet access for a single monthly price, it is not clear how the Commission could accurately assess the revenues attributable to the interstate voice service and to the telecommunications component of the information service. By the same token, when cable modem providers offer broadband services, the fact that most do not separately provide broadband transmission services would make it very difficult to segregate the revenues attributable to the telecommunications portion of the information service. These line-drawing conundrums will become even more problematic as bundled service offerings become more varied and complex. As a result, providers will have the opportunity and incentive to contribute less than their fair share by understating the portion of their bundled offering that is attributable to an interstate telecommunications service.

The upshot, I fear, will be a continued decline in the reported base of interstate telecommunications service revenues — and a corresponding increase in the contribution factor. If, on the other hand, providers of end-user connections to interstate networks contributed based on these connections, rather than on a portion of their revenues, all of these intractable revenue-allocation issues would disappear.

Finally, although the Commission did not raise the question of assessing contributions on broadband Internet access services in this proceeding (it is raised in the pending *Wireline Broadband* rulemaking), some of my colleagues have suggested resolving that issue now. I do not think it would be appropriate to do so until we complete our analysis of the statutory classification of wireline broadband services, which bears directly on our authority to assess contributions. I would also like to have a better sense of whether the Commission will adopt a connection-based approach before deciding whether and how broadband providers should contribute, because the merits of separately assessing the telecommunications component of broadband services may differ in that case. I would have taken a more limited step in this interim period, however, by exempting from assessment any DSL transmission service provided to ISPs, pending the outcome of the *Wireline Broadband* proceeding. There are two reasons for doing so. First, the fact that LECs providing DSL service currently contribute to universal service, while cable modem providers do not, creates an obvious competitive distortion. We should either assess both broadband platforms or neither. Second, the Commission already has determined in another context that incumbent LECs' sale of bulk DSL transmission services are properly considered wholesale telecommunications services: and it seems logical to treat those services as wholesale — and thus not subject to any contribution obligation — for universal service purposes as well. I regret that the Commission was unable to agree on a means of ending the DSL/cable modem contribution disparity, but I am hopeful that we will do so in the *Wireline Broadband* proceeding.

¹ Others argue that we should preserve a revenue-based methodology *without* assessing the telecommunications functionality underlying information services, but that *would* seem to be a recipe for sky-high contribution factors going forward.

² *Deployment of Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Second Report and Order, 14 FCC Rcd 19237 (1999) (*AOL Bulk Services Order*).

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Federal-State Joint Board on Universal Service

I am pleased that the Commission is taking interim steps toward ensuring that every carrier contributes on an equitable and nondiscriminatory basis to universal service. Without today's action, consumers of long-distance services would have seen a significant increase on their bills as of April 1.

Notwithstanding the actions we take today, we must continue to look for long-term solutions that will put the fund on a solid footing to preserve and advance universal service. In the abstract, I find much to recommend a revenue-based system. It is undoubtedly equitable and nondiscriminatory for those who use the network more to contribute more to further the goals of universal service. That being said, I am fully cognizant of the pressures on our revenue-based system that are detailed in our decision today. For that reason, I am willing to consider changing our methodology for assessing carrier contributions to the universal service fund. Before I would agree to any paradigm shift in our methodology and the attendant administrative costs, however, I want to be certain that our methodology meets the statutory requirements and is administratively workable.

I also urge the Commission to address expeditiously the issue of broadband providers' contribution to universal service. I ~~am~~ disappointed that the current disparity under which DSL providers contribute and cable modem providers do not will continue for an indefinite period of time. When the Commission finally addresses this issue, I hope we will do so in a manner that does not narrow the contribution base and undermine the sufficiency of the fund. We must also work to avoid a system that opens the door to regulatory arbitrage or distortions in the market. I would also stress my belief that broadband will satisfy the statutory criteria for inclusion in the list of supported services in the near future.

As we move forward with this contribution methodology proceeding, let us also recognize that taking action on the contribution side is only half of the equation. The Commission and the Federal-State Joint Board on Universal Service must also address distribution issues if we are to confront all of the pressures on the fund. That means we must complete such proceedings as the current one on portability of universal service in markets with competition.

Finally, I hope we will work closely with our state colleagues as partners on these universal service issues. The statute makes clear that Federal and State governments each have a significant role to play in preserving and advancing universal service. It is only through a cooperative effort that we will meet our statutory obligation to ensure that all Americans, no matter who they are or where they live, have access to reasonably comparable services at reasonably comparable rates. Each and every American should have access to the best, most accessible, and cost-effective communications system in the world. In this modern era, that is a fundamental right.

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45;

1998 Biennial Regulatory Review — Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171;

Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571;

Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size CC Docket No. 92-237 NSD File No. L-00-72;

Number Resource Optimization CC Docket No. 99-200; Telephone Number Portability CC Docket No. 95-116; Truth-in-Billing and Billing Format CC Docket No. 98-170.

Good item.¹

¹ See Appendix A. Separate Statement of Commissioner Kevin J. Martin, Federal-State Joint Board on Universal Service, Further Notice of Proposed Rulemaking and Report and Order, CC Docket 96-45, *et. al* (rel. February 14, 2002); Separate Statement of Commissioner Kevin J. Martin, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. June 13, 2002); Separate Statement of Commissioner Kevin J. Martin, Schools and Libraries Universal Service Support Mechanism: CC Docket No. 02-6 (rel. June 13, 2002).

Appendix A

SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: Federal-State Joint Board on Universal Service, Further Notice of Proposed Rulemaking and Report and Order, CC Docket No. 96-45 et al.

I am pleased to join in approving this item, which seeks comment on proposals to alter our universal service contribution methodology. Maintaining the stability of the universal service contribution system is one of the Commission's most important responsibilities. Congress codified this responsibility in section 254 of the Telecommunications Act of 1996, which requires the Commission to, among other things, ensure there are specific, predictable, and sufficient support mechanisms to preserve and advance universal service. *See* 47 U.S.C. § 254(b)(5). I am firmly committed to carrying out this directive and to fulfilling Congress' goals of ensuring affordable telecommunications services and access to advanced services in all regions of the nation. *See id.* § 254(b).

To fulfill this responsibility, the Commission today issues a notice reevaluating the contribution methodology. As consumers migrate to new products and services, we may need new methods for assessing universal service contributions. Accordingly, I welcome consideration of novel and different proposals of how to assess universal service contributions.

While we consider these comprehensive reforms, however, I believe it may be important to take some immediate steps. For example, AT&T has complained that assessing contribution obligations on past revenues, as the system currently does, unfairly penalizes carriers with declining revenues and unfairly benefits those with increasing revenues. I believe we should take action on AT&T's waiver request, which seeks to allow AT&T to pay its contributions based on projected rather than past revenue. Whether we make changes along these lines or some other alterations to the current system, I believe some short term adjustments may be warranted. I also wish to highlight one issue for comment. In weighing the various proposals, we must make sure that "[a]ll providers of telecommunications services . . . make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." 47 U.S.C. § 254(b)(4). We must also follow the Court of Appeals for the Fifth Circuit's holding that the Communications Act prohibits the Commission from assessing contributions on intrastate revenue, *See Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 448 (5th Cir. 1999). I thus think it is crucial that parties comment on how the different proposals comply with both of these limitations.

Finally, I wish to emphasize the importance of participation by the states in this proceeding. We welcome comments from the state commissions, and we have committed to seeking input from the Universal Service Joint Board before making any significant changes to the contribution methodology. I ~~am~~ confident that we could do so in a manner that does not cause any unnecessary delay.

STATEMENT OF COMMISSIONER KEVIN J. MARTIN, APPROVING IN PART
AND DISSENTING IN PART

Re: Schools and Libraries Universal Service Support Mechanism - - CC Docket No. 02- 6

At the outset, I want to reaffirm my support for the universal service program and the critical function it serves to ensure access for consumers in rural and high cost areas, and promote access to advanced services for schools, libraries, and health care service providers in rural areas.

I am pleased that the Commission has clarified that effective no later than second quarter 2003 any unused funds from the schools and libraries support mechanism in any given year will be carried forward for disbursement in subsequent funding years. The schools and libraries program has been instrumental in facilitating access to advanced services. Today's action will help us ensure that schools and libraries will be able to use the funding available under the existing \$2.25 billion annual cap.

I am also pleased that the Commission is moving forward today to take action to stabilize the universal service contribution factor for consumers. I agree with the majority's decision to blunt the impact of spikes in the universal service contribution factor. I have concerns, however, regarding the methodology used to achieve this result. I would have taken a different path to achieve relief for consumers while providing greater market certainty and ensuring that we achieve our mutual goal of protecting the continuing health and sustainability of the universal service fund.

Some of the systemic problems of our universal service contribution methodology are not new. Back in April 2001, the Commission outlined these issues and sought comment on various potential solutions. For example, the Commission acknowledged the inequities in the universal service contribution system of declining revenues for certain wireline interexchange carriers, as well as the potential impact that the growth in the wireless telecommunications sector may be having on the fund.

At that time, the Commission adopted a Notice of Proposed Rulemaking that acknowledged the inequities of the current system and sought comment on specific proposals to address comprehensive reform of the universal service contribution system. Eight months later, with no permanent relief in sight, AT& T presented this Commission with a request to help level the playing field on contributions to the universal service fund made by its over 50 million long distance customers. For example, AT& T customers now face a monthly federal universal service fund surcharge that stands at over 11%, while customers of new entrant long- distance providers pay at or below the FCC contribution rate set within the 7% range. I supported taking action on their petition at that time and today.¹

¹ See Separate Statement of Commissioner Kevin J. Martin, Federal-State Joint Board on Universal Service: CC Docket No. 96-45 (rel. June 13,2002).

I support the Commission's efforts to address the long-term issues created by a converging and competitive marketplace. I look forward to working with my colleagues to establish an equitable and nondiscriminatory contribution system that provides for specific, predictable and sufficient funding to preserve and advance universal service.

At its heart, today's decision takes unused money from the schools and libraries program to stem the growth of the contribution factor while the Commission grapples with long term solutions.

I would have preferred to put in place medium term remedies to address some of these contribution methodology issues (e. g., declining revenues and the potential impact that growth of the wireless telecommunications sector has on the fund). While we continue to address the long term issues, I believe we should address the various inequities that require certain service providers and their customers to bear a disproportionate share of funding the universal service system. Especially since demand for the school and libraries program has always exceeded the cap, I believe we should have taken these steps first before taking any unused monies.

I believe it is incumbent upon us to have taken steps immediately available that could both minimize the impact of any increase on consumers and address potential inequities in our current system prior to taking some of today's actions.

Accordingly, I approve in part and dissent in part from the order.

STATEMENT OF COMMISSIONER KEVIN J. MARTIN

Re: Federal-State Joint Board on Universal Service; CC Docket No. 96-45
AT&T Petition For Waiver

I disagree with today's decision by the Wireline Competition Bureau to deny AT&T's request to contribute to universal service based on its projected, rather than its historical, revenues.

Under the FCC's rules that govern universal service contributions, carrier payments to the fund are based on a snapshot of interstate revenues during the previous six months. Over time, increased competition, regional Bell company entry into the interexchange market, and changes in the marketplace have continued to reduce the interstate revenues of the traditional interexchange carriers.

The Commission's rules now place certain interexchange carriers — such as AT&T that face declining revenues at a distinct competitive disadvantage. To comply with the Commission's rules, carriers with declining interstate revenues must collect a greater share of universal service contributions from a shrinking customer base. In particular, consumers of these long distance carriers have been required to contribute a disproportionate and inequitable share to ensure the preservation and advancement of universal service. AT&T's long distance customers, for example, now face a monthly federal universal service fund surcharge that stands at over 11%, while the FCC's contribution rate is set within the 7% range. While AT&T's customers bear this burden, customers of new entrant long-distance providers (e.g., Bell operating companies) have the unfair benefit of supporting the fund at or below the FCC contribution rate.

I am concerned that the Commission has been aware of the magnitude of this problem for quite some time and yet has failed to act. In April 2001, the Commission adopted a Notice of Proposed Rulemaking that acknowledged the inequities of the current system and sought comment on specific proposals to address comprehensive reform of the universal service contribution system. Eight months later, with no permanent relief in sight, AT&T filed its petition for waiver for an immediate interim fix so that it could contribute to universal service based on projected revenues.

I supported granting AT&T's waiver last December and would have supported granting all similarly situated carriers similar relief. Granting the waiver would have, at a minimum, provided immediate relief for at least 50 million long distance customers nationwide while the Commission continued to deliberate on a more permanent solution to the contribution methodology issue. In addition, it would have set the groundwork for creating a more equitable contribution system by closing the gap on the contribution obligations of different service providers and their end-user customers. This measure would have also brought us one step closer to establishing a more level playing field for contributions amongst carriers providing interstate services in the marketplace.

In my view, by waiting six months to address AT&T's waiver request the Commission has created greater uncertainty in the marketplace and has exacerbated an already troublesome situation. With each passing day, AT&T's competitive disadvantage resulting from universal service contributions grows as the Bell Operating Companies continue to receive 271 long distance authority throughout the country and gain significant long distance market share. In general, I support Commission's policies that encourage service providers to compete for service offerings based on market factors such as price, service quality, and convenience but do not favor policies that advantage certain competitors through distortions and loopholes in our regulatory framework.

Unfortunately, I am not as confident that a permanent solution is right around the corner. I would have therefore granted AT&T's petition for waiver last December and would do so again now.

Maintaining a specific, predictable and sufficient universal service funding mechanism is a vital responsibility of the Commission. I support the Commission's efforts to address the long-term issues created by a converging and competitive marketplace. I do not believe, however, that we should stop making on-going adjustments to the current mechanism to address competitive inequities while we spend months and/or years grappling with the longer term problems. I believe we have a duty to address such immediate and mid term problems as well as the long term ones.

Accordingly, I disagree with the result of the Bureau's Order.